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The Economic Significance of Trade Associations.

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By

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Introduction.

The purpose of this thesis is to indicate the economic services that the Trade Associations are rendering to society and their contributions to economic progress.

The Trade Association of today is a constructive organization and the natural evolution of business co-operation. It is outstanding in such fields as scientific research, in statistics, in standardization of products, in arbitration of commercial disputes, in the development of foreign trade and in other fields of public interest.

Almost every industry has its trade association and these associations are in many cases national in scope. In some cases there is more than one association performing the same service, in other words there is undoubtedly a duplication of effort in some businesses.

The importance of the trade association and its influence upon our economic structure is not overemphasized when one learns that there are over four thousand such organizations in the United States, spending every year millions in advertising, research work, and other lines of industrial development.

The legal aspect of trade associations has changed from that of one frowned upon by the government authorities to one encouraged and aided by the government agencies.

Co-operation is the keystone of Civilization. We can encourage co-operative associations in industry without endangering competition.

PART 1.

Part 1

The Development of Trade Associations.

1. The Nature of Trade Associations.

The definition of trade association, formulated by the American Trade Association Executives reads: "A trade association is an organization of producers or distributors of a commodity or service upon a mutual basis, for the purpose of promoting the business of their branch of industry and improving their service to the public through the compilation and distribution of information, the establishment of trade standards, and the co-operative handling of problems common to production or distribution of the commodity or service with which they are concerned."* For convenience, a trade association may be defined as, "an organization for mutual benefit, made up of many independent business concerns, engaged in a similar kind of industry, whose function is chiefly to determine the policies of that industry."

The trade association is not engaged directly in the actual business of profit-making transactions. Its members are limited to those engaged in a particular business field and its activities are confined to that particular field.

The oldest type of trade association was called the Board of Trade or Chamber of Commerce. These organizations were in reality active traders co-operating to provide uniform methods of buying and selling graded products and furnishing a common trading ground. Their operations were frequently in-

*See Handbook, American Trade Association Executives, Chicago, 1924.

vestigated as to legality for they sometimes attempted to manipulate prices or form trade conspiracies.

Similar to the Chamber of Commerce organizations were the open price associations. Their chief function was largely to determine prices. Their members were principally sellers. They were formed mainly to provide their members with accurate information of the market, in order to make an adjustment of production and prices. These reports, relating to market conditions were drawn up and distributed among its members.

The trade association of today differs considerably from that of fifty years ago. The attitude of the public and of the Federal Government toward trade associations has changed from one of distrust and misunderstanding to that of confidence, co-operation, and understanding.

The functions of trade associations have changed from that of attempted price-fixing, and monopolizing to that of standardization, research, formation of business ethics, and commercial arbitration.

2. The Beginnings of Trade Associations.

Some associations can trace their formation prior to the Civil War. For Example, the National Cotton Manufacturer's Association was founded in 1854. Trade Associations, as are now common, may be traced to the Civil War period. The severe conditions affecting business, following the Civil War were not favorable to the formation of trade associations.

Likewise the panic of 1873 delayed the formation of these organizations. However, during the two years preceding the panic of 1873 some important associations were formed and after the ensuing depression numerous organizations sprang into being. Among these were the National Association of Stove Manufacturers and the Silk Association of America, both of which are active today. Both of the above associations were formed in 1872.

The early trade associations seem to have been formed in order to enable their members to take advantage of favorable business conditions then existing. Nothing of the constructive nature was attempted. The members would meet and attempt to overthrow set economic laws, which in most cases proved futile. Attempts to set prices, limit production and divide territory were all tried in vain.

During the second stage of trade association development the organizations took on the dignity of a business institution. The members met at annual conventions, maintained permanent offices, and had officers elected by the members. In some cases social activities became important in the life of the association. It was considered an honor to be elected an officer in the association. Although a few organizations attempted illegal practices, the majority were above board and acted legitimately. The passage of the Sherman Anti-Trust Act really influenced the activities of the trade

associations. During this period trade associations carried on the following activities for its members.

- a. Standardization of materials.
- b. Inspection services at wholesale markets.
- c. Commercial arbitration.
- d. Curtailment of production.
- e. Agreement on prices. (This was later given up and "market reports" were distributed instead. The purpose however was the same as the previously issued price lists.)

About this time the need for national organizations to co-ordinate the work of the several associations of local nature was felt. The work of these national organizations has been directed along three main lines. It has organized and conducted a credit rating bureau and collection service of nation wide scope. The statistical department has performed a useful function in compiling data as to capacity, production, and nature of production in the various regions. Finally, the national organization has done much to educate the consumer through publicity and has at times exerted its influence on the enactment of laws regarding certain industries in which they had an interest.

The course of the trade association movement during the period 1890 to 1911 may be seen from illustrating what took place in the lumber industry during this period. The period saw a gradual abandonment of coercive efforts to control production and prices through trade association activity.

It also witnessed the growth of the association activities of a more desirable character. Standardization of products, interchange of credit information, compilation of production statistics, stimulation of demand of particular materials or commodities, less litigation and encouragement of more favorable legislation.

3. The Idea of Co-Operative Competition.

The growth of these better type associations helped to disarm legal criticism of the trade associations. But, these organizations did not wish to abandon their efforts to control prices and market conditions. These matters had been instrumental in bringing trade associations into existence and the impetus to control market conditions was still strong. But the danger of running afoul of the law through this type of association was becoming more imminent. President Roosevelt and his successor were very active against trust activities and concerted industrial efforts. About this time a new idea was conceived in the manner in which trade associations might function. It was called "co-operative competition." The new conception showed itself in the reorganization of old associations, the formation of new associations, and through the increased emphasis upon co-operation of efficiency.

The change which took place following 1911, was not alone caused by this idea however. The country was approaching a more stabilized economic basis, population was increasing rapidly, and new discoveries of natural resources were un-

earthed. Business men found it necessary to adjust their activities more accurately and intelligently. It became necessary to substitute reliable information for mere guess-work. The way to accomplish this was in co-operative action among the like industries. Its advantages seemed to especially promising for the development of more harmonious labor relationships and more efficient production.

4. Principal Activities of Trade Associations.

a. The Open Price Policy.

The open price plan was thought by many business men to be the "way out" of periods of great prosperity and low depressions. The basic idea of the open price plan was to provide, through trade associations, for the interchange of business information among competitors of the same line of industry, in order that production and price policies might be adjusted openly and intelligently. This information consisted of filing with the association such information as had to do with bids, contracts, and inquiries.

As these organizations developed the scope of information collected and distributed increased and covered a wider field. Few of the associations foresaw the legal entanglements into which they were progressing. Branches of the steel industry were among the first to start open price exchanges. Open price development did not cease until after the adverse decisions of the United States Supreme Court.

b. Increase in Economic Efficiency.

The profit motive, as well as the changing economic conditions, acted as a stimulus for co-operative efficiency. Attempts were made to reduce operating costs. The savings, due to increased efficiency, because of new technical improvements in manufacturing and marketing processes, benefited the trade as a whole and it takes some time before these benefits are passed on to the ultimate consumer. So the trade associations reasoned it out. During this period trade associations took up activities dealing with industrial research. This work was mutually supported and constituted one of the first of their constructive policies. As it was impossible for small factories to conduct research work because of the expense, it became practical for trade associations, mutually supported, to erect research laboratories, for the benefit of all the members. The findings of the chemists and industrial engineers were distributed to all the association members.

Later on the trade associations entered upon other activities of a more general, but, nevertheless, of a beneficial nature. Standard cost accounting systems were adopted. Uniform contract forms were drawn up; credit bureaus were organized; and in some cases co-operative insurance arrangements were made, where the hazards were high and the insurance cost expensive. Joint advertising campaigns came into being

and copyrighted trademarks were common to entire industries. Patents were pooled and exchanged among members. Arbitration boards were organized to settle trade disputes. Traffic bureaus were formed to help in the problem of transportation. Co-operative purchasing became common and business ethic codes were formed.

In all these activities the aim was to increase efficiency in the marketing and manufacturing processes. They have been developed by means of the new idea of "co-operative competition." As in almost all analogous cases some associations abused the practices and entered the field of illegality. But the majority accomplished real constructive work.

c. Solving Labor Problems.

A third practice of trade associations was the building up of a method for dealing with labor collectively. Because of the rapid growth of the trade unions and labor organizations the trade associations felt the need of developing an agency to deal with labor as a group. Numerous employer's associations were formed and trade association activities were extended to include the field of labor problems. The value of the work accomplished along these lines is questionable, but the trade association did establish means of educating their members in the field of employee welfare work. Some progress had been made along these lines up to 1911, but since then increased activity has been apparent. Systems of training

employees have been worked out. Mutual benefit societies for employees have been organized. Co-operative insurance against industrial accidents and trade diseases have been instituted. All of these activities have helped to smooth the breach between the employer and the employee.

5. The Effect of the War on Trade Associations.

The circumstances of the War and its aftermath had a tremendous influence upon trade associations and their development. The European War (before the entrance of the U.S.) placed extraordinary demands upon American industry and this resulted in an emphasis upon quantity production. Upon our own entrance into the conflict the demand changed from production of all commodities to that of certain essentials necessary to carry on the war. This meant curtailment in other non-essential lines of industry. While primary importance and reliance was placed upon private initiative, the Government undertook to deal in many matters, but with the entire trades and industries. For this purpose trade associations were the most effective and convenient instruments. As a result of this government policy the then existing associations were strengthened and new associations were organized.

After the war the advantages of co-operation both in manufacturing and marketing were clearly realized. The result was the formation of a great many new associations during the post-war era. Apparently the only uneasiness of

of the trade association today is the attitude of the government towards it. This may have affected their apparently slow growth in recent years, or, perhaps, it is because of the gradual filling up of the field.

6. The Policy of the Government Toward the Trade Association.

The conduct of many trade associations has been subjected to investigation by the Federal Trade Commission, and in some cases prosecution has followed by the Department of Justice. In some instances adverse judgments or restrictive decrees have served to delay or check the trade association movement and to throw doubt on the legality of some of their activities. But not in all cases was the government repressive. These differences in opinion have kept the trade association movement in a rather unsettled state. While the Department of Commerce has encouraged the growth of the trade association through its leniency, the Department of Justice has acted as a check through its adverse decisions. The future status of the trade association seems dependent upon the character of government attitude toward them.

7. The Present Legal Status of Trade Associations.

The lawfulness of a trade association depends upon the purpose for which it was formed and the means employed to carry out these purposes. Courts judge the purposes principally from the means by which they are carried out. Some trade association activities are positively forbidden and

these include any that suppress competition. Such activities also include efforts to control production and prices.

Another activity in which lawfulness is dependent upon the nature of the effort is in compiling data. So long as the information is used to develop commercial processes and thus only tends to regulate competitive conditions it is not condemned.

Then there is an association activity which gives rise to its legitimacy from the point of view of public policy.

When an association has been found guilty of a forbidden activity where the association simply served as a device for illegal purposes the court dissolves it. Or, the court may simply prohibit that particular act of the association which was adjudged illegal. Of course in case of a private wrong an individual may sue under the Sherman or Clayton Act.

8. The Advantages of Trade Associations.

There is no doubt that trade associations gave stimulus to improvement in manufacturing and showed the need for research in marketing methods. During the World War the trade association acted as representatives for the different lines of industries. The trade associations took the initiative in certain lines of endeavor which have since been perfected. Such lines of endeavor as standardization of products, adoption of uniform contract forms, systems of cost accounting, and the formation of a code of business ethics were born in the war

work of the trade associations. They contributed to a better organization of business control and laid the idea of co-operation among business and trading industries.

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Part 2.

Activities of Trade Associations in Suppressing Competition.

1. Joint Selling Agencies.

Among the early cases arising under the Sherman Act is one involving the organization, by an association of coal producers, to pool the output of the entire membership and sell the same at prices fixed by a committee of the association. The proceeds of the sales were divided among the members according to their respective tonnage, after deducting the expenses of the sales company.

The petition of the government to dissolve the combination was readily granted by the Supreme Court. Other similar cases rose in which the organization was dissolved and relief granted the injured parties. In these cases the producers usually formed a single agency as their exclusive sales representative.

2. The Economic Character of United Selling Agencies.

The establishment of selling agencies, by trade associations, is not usually a direct undertaking. The association, if it sanctions such a selling organization, acts primarily as a meeting ground for negotiation. The illegality occurs through the several producers agreeing among themselves that each will constitute the one agency its sole outlet to the market. This mutual restraint of nominal competitors practically destroys competition. The parties con-

cerned, although practically independent, completely unify their interests as sellers. The various members become simply producing members for the single selling agency.

Prices must be uniform and care taken that no producer has an advantage over another, and this necessitates some control over supply. Accordingly, joint selling agencies or agreements, and their support by trade associations are not approved by the law.

3. The Exclusion of Outsiders from the Market.

A. Nature and Method.

Sometimes organizations that refused to join the association have been denied access to the market. Again, associations have black listed price cutting dealers in a certain trade.

Another such situation arises when a new firm enters the business over which the trade association has jurisdiction, and invades the territory of trade association members. This called for the concerted action of the members of the entire trade association. Most of the above situations arose where manufacturers attempted to enter the jobbing trade, and jobbers the retail trade or retailers the jobbing trade. The measures taken to exclude these objectionable parties from a given market were several.

a. A blacklist might be prepared and maintained to restrain members from dealing directly with the outlaws.

b. A boycott set up with the requirement that members of the association should not patronize any party who dealt with the party to be excluded.

c. The objectionable business unit might be bribed to withdraw from the market.

d. Market facilities might be denied.

e. Inducements might be made to the public not to trade with the outlaw firm.

From the legal standpoint, the method of enforcement seems to be immaterial, provided the practice does tend to exclude from the market prospective newcomers.

B. Condemnation of the Exclusive Practices.

The best case illustrative of the above practices is that of the "Eastern States Retail Lumber Dealers' Association." This association had devised a system for learning through its local branch offices the names of those wholesalers who sold lumber direct to the consumer. If such a wholesaler refused to discontinue the practice his name was placed on a list and the list mailed to the association members. This list was called the "Official Report." This meant that no member was to deal with the wholesalers listed therein. Although the retailers could, if they chose, continue to deal with the names on the "list", the court maintained that the arrangement amounted to a boycott and was therefore illegal.

The following is typical of the boycott practice

of trade associations. The Philadelphia Tile Dealers' Association had instituted a boycott scheme to compel manufacturers to restrict their sales of tile in that city to members of the association, all of whom agreed to conduct their business on a pre-arranged basis. Upon indictment, the members principally responsible were found guilty, and fines and sentences were imposed. This case proved that there is no excuse for members of an association to restrict the number or to discriminate with regard to character, of persons entering a given branch of commerce or industry.

The practice of apportioning territory among members of an association has also been forbidden. This amounts to exclusion from the market, even though it is with their consent. In the same way, arrangements whereby independent competing companies agree mutually, that each will not encroach upon the market area allocated to others of their number, are violations of the anti-trust laws.

The illegality of this practice is so clearly established that cases of this nature have been rare since 1899.

4. Curtailment of Production.

a. Agreements to Curtail Production.

One of the primary sources of the monopolist's control over price is his control over supply. While the character of the demand for his product is dependent on factors beyond his control, yet he may, through control of supply

establish prices which will yield the highest net return. It has long been a principle of public policy that agreements designed to restrict production or to limit the supply of any commodity, directly or indirectly, are illegal. In recent years, even arrangements to regulate production by concerted action have been condemned by law.

2. Exchange of Opinion and Restriction of Output.

A situation sometimes arises whereby, in the absence of agreement or understanding to restrict output, the interchange of data concerning stock and general production, by members of a trade association is simply used to straighten out market conditions. Such a procedure, enables competing concerns to plan their production policies more intelligently, on the basis of economic fact, rather than on mere guess work. This is for the public benefit for it serves to stabilize economic conditions. In the same manner, there is nothing improper, if one tries, in a given industry, to obtain from a rival, judgment upon what constitutes a sound course in an emergency. Common counsel in business, is enlightening and useful. The advice given must not include false information about competitors, calculated to deceive them concerning the real condition of the trade, nor the giving and taking of reciprocal agreements designed to result in uniform policies.

Communications, made in good faith, and expressing the mere opinion, advice, or individual judgment of the person

or persons responsible for them, do not interfere with free competition.

The law appears to be directed against common agreements to regulate production. These agreements may be a result of a system of reporting through collecting and distributing data and from the advice accompanying this data. The essential element of wrongful conduct consists, in the offer and acceptance by members of a trade association, of reciprocal agreements concerning their production policies. The exchange of opinion and advice among business men in any trade is not in itself unlawful, but where the process is used as a subterfuge for an illicit scheme, the activity is condemned.

5. Price Manipulation.

A. Outright Agreements.

Under a competitive system of industry the free play of economic forces affecting prices is necessary, in order to protect the public against private exploitation. Market values of the great varieties of commodities offered in exchange serve as a guide for capital investment, labor distribution, and for business enterprise. The general tendency of the price of goods to approach the cost of production is dependent, basically, upon the maintenance of open markets and the non-interference of conditions affecting supply and demand.

However, in modern industrial society, there are numerous factors which obstruct these adjustments between supply and demand. We are concerned only with the obstruction of competition through co-operation in price-making as it manifests itself through trade association activities. Economic doctrine and legal principles are in accord in regard to the preventing of price-fixing. In short, a trade association cannot engage in any practice tending to directly limit price competition within an industry without violating the prohibitions of the anti-trust laws.

B. Agreements Upon Specific Elements of Price.

The outcome of competition very often depends upon comparative advantages in such elements as labor, material, risk, planning, or transportation. Concerted action regarding any of the above elements tends to influence price and hinders the free functioning of the competitive process in the adjustment of market conditions. While such action may not preclude the competitive regulation of a business, it is nevertheless, deemed illegal as an unreasonable restraint of trade. The familiar forms of the above agreements relate to the fixing of a uniform percentage of profit over manufacturing costs or purchase price, or some variation of it. Restrictions of this type have from time to time been identified with trade association work. Sometimes these restrictions have come about by emphasizing a uniform cost accounting

system for adoption by a certain industry. There is no reason for complaint so long as the emphasis is confined to uniformity in methods of accounting. But it is an easy transition to encouragement of uniform entries in accounts or stipulation of procedure which will give uniform results. The matter of uniform cost accounting finding is a recent development. A recent case arose from a complaint of the Federal Trade Commission against the United Typothetae of America. This association of job printers started a campaign to furnish members not only with technical advice, but also, with specific data for entry of certain expense items and with average production costs for various types of commercial printing. These data were supplied in a booklet known as the "Standard Guide," and it was compiled by the price list committee of the association and revised from time to time. Although not condemning the practice on uniform cost systems the Federal Trade Commission stated in substance, "The Commission approves the efforts of trade associations to inculcate in their members a recognition of the necessity of proper cost accounting, as essential to the conduct of the business, but those practices which amounted to a mechanical process for fixing a uniform selling price required close investigation."*

More recently in a petition against the Southern Pine Association, the defendants were charged with having

*Federal Trade Commission v. United Typothetae of America, 7 F.T.C. Dec. 345 (1923).

established as a minimum selling price basis the average cost of production disclosed by the compiled cost figures of its members. These practices are frowned on by the Federal Trade Commission and call for investigation and charges. Agreements that certain elements of cost shall be relieved from this pressure seem to fall within the prohibitions of the Sherman Act. But this does not prevent trade associations from attempting to promote the use of standardized cost accounting systems.

The difference between the legitimate promotion of cost accounting practice and its use as a means of stimulating uniform price policy is apparent, and has been clearly outlined by the government.

6. Informal Understandings on Price Policy.

Thus far we have considered primarily explicit agreements, to maintain prices or fix cost elements of prices. There are other less direct methods of manipulating prices. In some cases the element of agreement emerges through implication-- are these less formal understandings equally forbidden by law ? It seems that any real co-operation in the direction of fixing prices, will serve to make the relationship of the interested concerns unlawful. Uniformity of price policy may of itself afford ground for suspicion. If such uniformity is found to result from joint agreement, there appears to be ground for prosecution.

7. Open Price Agreements.

This plan, inaugurated by the three hundred and sixty-five members of the Hardwood Manufacturers' Association, was called by the organization the "Open Competition Plan." This plan adopted by the association required each member to submit:

a. Daily sales reports, including the names and addresses of buyers and all terms and conditions of each transaction.

b. Daily shipping reports, including exact copies of invoices and terms.

c. Monthly reports of production classified as to grade and thickness.

d. Monthly reports of inventories on hand as to quality and quantity.

e. Monthly price lists as of place of shipment, new prices to be submitted when made.

The above information was to be compiled and distributed to members. In addition monthly "market report letters" were sent out to members and monthly meetings were held to discuss any matters of interest to the members. The court saw in this arrangement an agreed understanding among the members to pursue a concerted price policy. In spite of the absence of express agreement, the methods employed were regarded primarily as a device, to achieve joint curtailment

of production and unified control of price, and was held to violate the Sherman Act. This decision brought forth a storm of protest from the business world.

Two years later, in a similar case the Supreme Court maintained its original position in every essential respect.

The Sherman Act is violated when each member of an association reports prices quoted and received by him and lays bare other intimate details of his business, for this does not reflect normal competitive conduct. According to judicial opinion, the free operation of competitive forces is unlawfully restricted.

8. Interchange of Trade Statistics and Price Manipulation.

In the absence of express agreement, the collection and distribution of market data by trade associations appears to be a legitimate function.

Therefore if the trade associations could eliminate the undesirable feature, their actions would be legal. This much is certain--the exertion of a concerted influence upon prices by ascertaining a consensus of opinion among an association of sellers, is not permissible under the anti-trust laws. The court claims that arrangements of this nature tend to destroy genuine competitive rivalry.

PART 111

Part 3.

Trade Association Activities in Regulating Competitive Conditions.

1. Trading Exchanges.

In the previous chapter the trade association activities which tended to suppress competition were reviewed. An attempt will be made to appraise the economic significance of the trade association activities which tend to regulate competitive conditions, rather than to suppress them.

Ordinarily the primary objective of co-operative effort is to further trade, for the public as well as the members of the trade, by trying to remove obstacles to economic efficiency, which are the result of individual effort, without co-ordination. Such regulation may be abused; it may bind the freedom of the members, or, it may obstruct business adjustments unreasonably. These activities are, therefore, in the doubtful category: a region of associated action in which the law approves or disapproves, according to the intent and character of the restraint and the actual or probable results of the associated efforts. The following activities of trade associations are representative of the above functions:

- a. The operation of exchanges.
- b. The collection and distribution of trade information.
- c. The Exchange of patent rights.
- d. The exchange of credit information.
- e. The negotiation of purchases.

f. The standardization of commodities.

g. The development of business ethics.

These activities attempt to make use of the trade association as a clearing house for information and policies for the benefit of the trade association as a whole. It is the purpose of the section to examine the character of these activities more closely, and to point out the economic benefits if any are present.

1. The Relationship Between Open-Price Associations and Exchanges.

There are outstanding similarities between open-price associations and exchanges. Both are organized groups of traders having a meeting place and a means of recording the market operations of their members. Exchanges include buyers and sellers whereas open-price associations include only sellers. Both organizations attempt to set up rules governing the methods of dealing by which their members trade. Open-price associations accomplish this by furnishing its members with uniform contract forms, which tends to regulate the routine involved in concluding transactions, such as methods of making payments or expediting negotiations.

From the standpoint of public policy, the activities, both of the open-price associations and the exchanges, are significant, because of their influence upon price policy and volume of business. The market information made available

through open-price associations, tends to concerted action in planning production and determining prices. But, since the exchange membership contains buyers and sellers, subject to conflict of interests, no combined action is developed. While the recorded actions may have an influence upon prices, it is untainted, because there is no manipulation through "pools" or "corners" by agreement among the members.

An exchange, therefore, properly organized and operated, merely provides a mechanism for orderly competition. It is a formal organization of the market, regulated by its members. Its rules are designed to strengthen and improve the marketing facilities, without depriving the public of competitively determined prices. While competitive conditions may be regulated somewhat by the exchange, there is no intent toward their suppression.

Exchanges have become the normal type of trade organization in the market of major staple products, because such products are capable of being graded and because their sources of supply are numerous. These characteristics make for active markets, which can be effectively organized through exchanges. The commercial basis of these exchanges, therefore, creates a clear presumption that they are legitimate organizations. They tend to facilitate competition rather than to restrict it. But the particular rules adopted by the exchange often raise problems of considerable difficulty.

2. The Validity of Restrictive Admission Rules.

In practice the exchanges are not open to all dealers. The question then arises as to the legality of an exchange because of rules that restrict membership, or by making admission depend upon a committee or entire body, or by limiting membership to a fixed number. Membership is a matter of privilege depending sometimes upon a membership committee. The membership may be limited or the cost of obtaining a membership may be high. Are such rules regarding membership allowable?

It seems that they are, for although they restrict the choice of brokers the exchange does not affect the entire market, but only that portion of it represented by the exchange. While the admission rules may obstruct the free flow of brokerage services, they can hardly interfere to any great extent with the free course of trade in the commodity market. The restriction in membership does not prevent the farmer from selling his wheat to any party ready to purchase, or to the limited number of dealers belonging to the exchange, and through them to anyone in the world who may buy from the exchange. Therefore it seems clear that trade is promoted rather than restrained, through limited membership.

The few cases that have been settled seem to warrant the above conclusion. i.e. Commonwealth v Dyer 243 Mass. 472 (1923).

3. Non-Intercourse Provisions.

Sometimes regulations of exchanges forbade members to deal with non-members. It has already been pointed out that concerted action excluding outsiders from any market is unlawful. The question which arises now is, may exchanges adopt rules inconsistent with this doctrine without becoming subject to the penalties commonly meted out to trade associations for similar actions?

In one of the first cases in which the Supreme Court had occasion to apply the Sherman Act to exchanges, the validity of non-intercourse provisions constituted the chief issue. The defendants were members of the Traders' Livestock Exchange*. They were called "yard traders", who bought and sold cattle on their own account in the public market of the Kansas City stockyards. In the usual course of trade, purchases were made from commission members representing drovers or stockmen, and sales were made to packers or "feeders". According to the rules of the exchange its members were forbidden to deal with yard traders who were not members, or with commission merchants who dealt with non-members, or with commission merchants who dealt with such non-member traders. Membership in the exchange was open to all reputable yard traders who were willing to live up to its rules. According to the court the issue was "whether, without a violation of the Act of Congress, persons who are engaged in the common business as yard traders of buying cattle at the

*Anderson v. U.S., 604 (1898). .

Kansas City stockyards, which come from different states, may agree among themselves that they will form an association for the better conduct of their business, and that they will not transact business with other yard traders who are not members, nor will they buy cattle from those who also sell to yard traders who are not members of the association.

The Supreme Court found nothing unlawful in the formation of the exchange or in the regulation under attack. The court said that the association did no business in itself and those who are members thereof compete among themselves and with others, for the purchase of cattle, while the association itself has nothing whatever to do with the fixing of prices for which the cattle may be purchased or thereafter sold. Any yard member may become an association member upon complying with its conditions of membership, and may remain such as long as he conducts himself in accordance with its laws. There is no feature of monopoly in the whole transaction."

The essence of the wrongful conduct is deemed to lie in concerted action looking to the arbitrary exclusion of outsiders from trading freely in a given market. Instead of stressing the opportunity of outsiders to obtain membership in the exchange, the emphasis may well be shifted to the peculiar character of the exchange, as an organization providing special facilities for trading. In this aspect an exchange differs essentially from a trade association: and it might be conceivably held that it is a reasonable and lawful

part of the consideration moving the several traders who contribute to the establishment and maintenance of these facilities that the members should be mutually obligated to confine their trading in the particular commodity to the exchange and its members.

4. Internal Trading Regulations.

Sometimes regulations were made by means of which the terms and signs to be used in negotiation were adopted. Or, the hours in which trading was to take place were agreed upon and even the methods of settlement were stated. Such regulations were a necessary part of the apparatus of all exchanges. These regulations in some sense and to some extent impose limitations on competition. But, under the rule of reason it is necessary to determine whether these regulations are merely calculated to facilitate the operation of competitive forces, or whether their interference with freedom of action is designed to obstruct the normal course of trade. In the words of Judge Brandeis,* "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition."

The court examined the nature of the "Call Rule" of the Chicago Board of Trade*. According to this rule members agreed to make bids upon "to arrive" consignments between the closing of the call market in the afternoon and the open-

*Chicago Board of Trade v.U.S., 246 U.S. 231,236 (1918).

* Ibid.

ing of the regular market upon the next day only at the closing quotation in the call market. The validity of this regulation preventing changes in price between sessions was upheld. The court found that "within the limits of its operations the rule helped to improve market conditions" in several ways. It created a public market for grain "to arrive." Before its adoption bids were made privately. Men had to buy and sell without adequate knowledge of market conditions. It distributed the business in grain "to arrive" among a far larger number of Chicago receivers and commission merchants than had been the case before. It eliminated risks necessarily incident to a private market, and thus enabled country dealers as well as grain merchants of Chicago to do business on a smaller margin. Other internal exchange regulations are tested in a similar manner.

5. The Abuse of the Facilities of the Exchanges.

Naturally some exchanges overstepped the bounds of prudence and operated merely as a price-fixing mechanism.

The following case is typical of those exchanges which became mere machines for price manipulation. The members of the Elgin Board of Trade were large-scale manufacturers of butter, known in the trade as "centralizers," with plants in a wide area roughly bounded by the Ohio and Missouri rivers and the Canadian line. The exchange established a "call board" the regular sessions of which were held on Monday of each week.*

* U. S. v. Chicago Butter & Egg Board. Federal Anti-trust Laws Department of Justice, Washington, December 15, 1923. pp. 83, 96.

Only members were permitted to trade at these sessions but apparently transactions were not confined to purchases and sales on their own account. All transactions were required to be recorded by the Secretary of the Board, and immediately at the close of each session these recorded data were laid before a "quotation committee" composed of five elected members. As described in the rules of the Board, it was the duty of the committee "after examining the record of the regular sales and taking into account the quantity of butter sold, as well as that offered for sale and remaining unsold, and also the state of other markets in the country.....to establish the market price of butter for that day.....which price shall be known as the board price. This price shall govern all contracts. In other words, the prices paid by the centralizers to farmers for their cream, and to local butter and cheese establishments for their output, as well as the prices for sales by themselves to distributors, were thus determined for the remainder of each week by the fiat of the quotation committee. In all such transactions the members were mutually bound to follow the "board price." As there were well-marked seasons during which the interests of the centralizers lay mainly in purchases, and other seasons during which their interests were primarily in sales, the advantages of this arrangement were obvious. But perhaps the most revealing rule of the board is the following: "The establishment of such

'board prices' shall not invalidate any sales made between members either on the call or otherwise at a price fixed at the time the sale is consummated." This provision showed a manifest conspiracy to fix prices for the benefit of the members of the Board, at the expense of outside participants in the trade, and, ultimately of the consuming public. In other words the rules of the Board were used to interfere with the normal functioning of the competitive process.

Looking now to the sphere of action of the exchange itself, as distinct from its operation as an agency for regulating the conduct of its members, there are certain limitations upon the scope of its undertakings inherent in the nature of the organization. Usually the only business transactions of the exchange itself relate to the distribution of price quotations based upon its recorded sales and to the leasing or maintaining of physical facilities. Its property right in these quotations has been upheld in a number of decisions. As a rule the information is secured by outside parties by subscription to a ticker service. There seems to be ample authority for the doctrine that arbitrary discrimination among applicants for the service is unlawful. In view of the manifest advantage to exchange members in enlisting the interest and confidence of the public in their market it is not likely that the issue will arise.

Generally, unlawful combinations organized and

operated as an exchange do not necessarily reflect upon the legitimacy of the exchange itself. Should it appear, however, that the established functioning on an exchange naturally tends to restrain trade, and it is used to cloak their secret machinations against the public, the whole arrangement might be disbanded by the court. But this situation would be an abnormal one.

6. The Collection and Distribution of Trade Information.

a. Importance of the Statistical Function.

The essential basis for the existence of trade associations is to be found in furnishing its members with information concerning the entire field of their trade. Knowledge, based upon ascertained facts, provides a sure foundation for the regulation of business affairs, in such a complex economic structure as we have today. Accordingly, the collection and distribution of trade information appears to be necessary for smooth activity in the marketing and manufacturing field. In recent years the trade associations have performed this function. They have performed this service because of the growing need for market data and because these organizations, afford the most natural medium for compiling and distributing the results. Let us examine the scope of these functions and see to what extent this service has progressed.

b. Open Price Arrangements.

The "open-price plan" has been held within the prohibitions of the Sherman Act. In the Hardwood* and Linseed Oil** cases reporting systems providing for intimate and detailed disclosures, upon a confidential basis, by competing producers concerning their respective individual operations, were condemned. But later, the Supreme Court, upheld trade associations in their statistical services of a broad character. There seems to be three characteristics of open-price activity, upon which the association work has been attacked. First, the participants were sellers only, and they alone gave and received information. It was a combination of sellers who acquired an intimate knowledge of each other's affairs. The data was not published so as to be available to buyers but were sent to subscribers in confidential communications. Secondly, the nature of the data collected was confined for the most part to matters bearing directly on price fixing. The market data exchanged were much more detailed than normally exchanged by genuine competitors. Finally, the data dealt with an exchange of opinion concerning trade prospects and future policy. There were frequent meetings of the members. These meetings offered an opportunity for group pressure and persuasion to induce conformity of trade conduct which was essential for the interests of the group as a whole. The emphasis was placed upon common understanding and concert of action.

*American Column & Lumber Co. v. U.S., 257 U.S. 377 (1921).

**U.S. v. American Linseed Oil Co., 262 U.S. 371 (1923).

But there was nothing in the Hardwood or Linseed Oil cases which made trade reporting, or collection and distribution of trade data illegal. If properly conducted such work of trade associations would be helpful and allowable. Accordingly, endeavors have been made to remodel the statistical services of trade associations so as to conform to legal requirements. At least one attempt has led in the direction of including buyers as well as sellers in the association, thereby setting up a market like that of the exchange. The most significant changes which have been recently made by trade associations, in order to conform to the law in regard to statistical services have concerned the substance of the reports, made by its members, the publication of the results, and the matter of the interpretation of the data compiled. Market information made available has tended to become more general in nature, specific details being omitted. Even when this general information comprehends data on production, sales, prices, shipments or inventories, it simply provides a basis for independent judgment on economic conditions and market trends in a certain trade. Moreover, the wide-spread co-operation of trade associations with the Department of Commerce, in furnishing statistical data relative to their respective industries for publication, is in line with the tendency to make this important service a legitimate one. By this means the information is made available to the public

as well as to the trade association members. Finally, the practice of interpreting by a common agency, the collected data, has been abolished and price discussion at association meetings curbed.

Another argument presented in favor of statistical activity was that full data upon every branch of the foreign trade of the country has long been officially collected and published for the public use. The willingness of private firms to disclose business facts is dependent upon the assurance that like facts are to be obtained from competitors, and that the information thus secured will not be used to their prejudice. Trade associations by the very character of their organization seem to be the most natural and effective instrument for the collection of business statistics in their respective fields. The Department of Justice was suspicious of this practice while the Department of Commerce assumed a most lenient and encouraging attitude.

c. Recent Decisions on Trade Association Activities
of Collecting and Distributing Business Data.

The outstanding facts brought forth by the Supreme Court in recent cases are that associations had compiled and distributed freight rate books, showing transportation costs from one or more commonly used basing centers to consuming points throughout the United States. The mere publication of this information was held by the court to be a

simple means or facilitating the prompt transaction of business. There was no reflection of illegality looking to the maintenance of uniformity of delivered prices. Nor can the court find any illegality in the frequent meetings of the associations, in the absence of any of any evidence either of agreement at such times upon price policies or even of the discussion of current or future prices. In the third place, the courts compared the work of the association in collecting, compiling and distributing trade information to that of the reporting service of the many newspapers, trade journals, and government agencies. In one case the court said, "But the natural effect of the acquisition of wider and more scientific knowledge of business conditions, on the minds of the individuals engaged and its consequent effect in stabilizing production and price can hardly be deemed a restraint of commerce, or, if so, it cannot, we think, be said to be an unreasonable restraint, or in any respect unlawful." Members of trade associations do not become trade conspirators merely because they gather and disseminate information which they use in the management and control of their individual businesses. These recent rulings by the Supreme Court has led to a considerable expansion of this sphere of trade association activity. The number of associations gathering statistics at the present time amounts to well over one hundred. The organizations issuing statistics are mostly manufacturers. Many associations

**Maple Flooring Assn. v. U.S., op. cit. Preliminary printing, p 16.

collect statistical data only once a year, either on a basis of their annual dues or as a general survey of the industry. Some associations collecting statistics directly supplement these by data from outside sources, such as export figures from the Department of Commerce and price and employment indexes from the Department of Labor; but the associations' main contribution to the knowledge of conditions in its industry will be made through its own statistics.

As to the practical value to business: The monetary return from the use of business statistics is hard to measure in specific returns. Still, a few examples are available. A cement dealer saved thousands of dollars on cement purchases by watching the cement and transportation statistics to determine the proper price at which to buy. A sugar refinery was able to forecast from current sugar data the unprecedented consumption of sugar in 1925 by August of that year and to adjust its purchases and sales policies thereto. Knowledge of market conditions through statistics has enabled a leather firm of exporters to save from two to four cents a pound on leather for five years in succession, besides considerable saving in time.

Such examples of the use of statistics, together with the continued increase of statistical work, both by new associations entering the field and by the expansion of the work of the older associations, are definite marks of the

fulfillment of a real need.

What to gather: The organization of statistical work in a trade association is usually entrusted to a committee. This group, with the assistance of the Secretary, studies the needs of the industry and the methods of obtaining this information. It reports its findings to the entire association and leads the discussion on the subject among the members. Once the statistical program has been adopted, the work of carrying it out falls almost entirely upon the secretary or manager, or a statistician in the manager's office.

The value of the statistics depends in a large measure upon the manner in which they are collected and presented. Statistics gathered and prepared without care or attention to the best statistical practice may often be misleading rather than helpful.

Of prime importance to the future utility of association statistics is the decision as to what to gather. The importance of each item to the industry should be carefully weighed. Those items should be included which there is reason to believe will prove useful to the industry and which may be readily obtainable; but this list should not be expanded too far, owing to the possible lack of available records of smaller concerns and to the danger of making the information blanks too cumbersome. Other items or details may be added later as demand develops. Before deciding definitely upon the items to be

covered, investigation should be made of the current statistics already available on the subject, which inquiry to the Department of Commerce will probably disclose. This procedure will, in the first place prevent possible duplication of data already gathered. Secondly, it will enable any trade association to make its blanks conform in classification to statistics of imports and exports on the article in question, to the production figures shown in the census of manufacturers, and to any other related current figures. The particular items to be gathered will vary as between different industries according to the requirements of the several industries, but, in general, the five figures considered essential are those for production, shipments, stocks, new orders, and unfilled orders, or such modifications as may be necessary to meet the particular requirements of the trade or industry under consideration.

Among the associations covering all these five items are: the National Association of Sheet and Tin Plate Manufacturers, the Oak Flooring Manufacturers, the Maple Flooring Manufacturers' Association, the Illuminating Glassware Guild, the Glass Container Association, the Paving Brick Manufacturers' Association, the Paperboard Industries' Association, and the National Association of Finishers of Cotton Fabrics. All these associations are also showing their figures as percentages of capacity.

Many associations need additional data, such as the expression of certain data in dollars as well as in quantities,

the segregation into sizes, types, grades, etc., and the segregation of orders and shipments by geographical districts. The tire figures compiled by the Rubber Association of America are classified by kind, (cord or fabric) by size, (regular or heavy or balloon) by shape, (clincher or straight-side) and by the many tire measurements.

The figures on the hardwood lumber, compiled by the Hardwood Manufacturers' Institute, are classified by species (red gum, sap gum, oak, etc.), by grade, (No. 1 common etc.) by district, (southern or eastern) and by the various dimensions.

The details asked for on the blanks should not be so minute that their segregation would reveal the operations of individual concerns. For instance, if it were known that only two members were making a certain grade of goods, the segregation of that grade from the others would permit each firm to know what the other was doing. Such details should be omitted from the forms.

As a rule monthly reports have proven the most popular. They are less susceptible than weekly returns to temporary influences and thus can be compared with greater confidence. Again, the issuance of more frequent reports means a heavier burden on the members and the clerical staff. Most organizations send out forms regularly to each of the members, in order that they may reach the members on the last day of the period to be reported. This has the advantage of acting as a reminder that

the report is due. To secure prompt action, the forms should be addressed directly to the person in charge of the statistics for each company. It should be the policy of the firm to fill out and return the form promptly.

To be of any real value to any industry the associations' statistics should include 50% or more of the industry's normal output, and 70% is advisable to insure a representative character. Less than these percentages might not show true trends.

The compilation of price statistics should be watched with particular care. Such statistics may be collected, tabulated, and distributed without any unlawful result. Knowledge of prices at which goods have sold is one thing; exchange of prices proposed to be quoted is quite a different matter. One is a record of fact which affords an essential element in the equipment of an individual to deal competitively with intelligence, whereas, agreement as to future prices is prohibited, as well as an agreement not to differ in price.

The distribution of the data should be made promptly, not only to members of the association, but to all persons interested, including trade journals, and government agencies, so that adequate publicity may be obtained. The association will thus put its statistical activities in the open instead of being under suspicion of secret expressions of information. The relation between publicity of statistical service and evident

good faith, in the event that an unlawful agreement is sought to be inferred, is a factor not to be hastily dismissed.

7. Interchange of Patent Rights.

a. Purpose of Co-operation in the Use of Patent Privileges.

Since the basic function of a trade association is to serve as a clearing house of ideas and information in a particular branch of industry, it affords a natural channel for the interchange of trade knowledge represented by patent rights. Patents represent new ideas, which for a limited time, the originator is granted a legal monopoly. These grants are made by the government in the interest of public welfare; as stated in the Constitution, "to promote the progress of science and useful arts." With reference to these patents, greater advantage may accrue, as far as each patentee is concerned, from the privileges obtainable in exchange for his contribution to a common fund of trade patents, than he would derive from the sole exploitation of his own inventions; and the resulting benefits to the entire industry would be far reaching.

Most of the difficulties arising in the formation of an equitable arrangement for the interchange of patent rights are economic in character. These difficulties can be solved concretely only in the light of actual conditions in each trade. Are only the association members who are at the time holders of patent rights entitled to secure licenses under

the patent pool ? How many, and what kinds of, patent rights will make an association member eligible to participate in the pooling arrangement ? Must each member contribute all of his patents to the common pool ? If not, what patents may he withhold ? Upon what terms are the cross-licenses granted ? Upon what basis are royalty rates to be reckoned ? How is the worth of a patent to be measured for determining the relative of several contributions ? It is manifest that large firms holding strong patents are not likely to enter a co-operative plan whereby they are to share these patents with a group of young competitors who offer nothing in return. So we can see that an agreement for the interchange of patent rights presents many practical difficulties.

b. Restrictive Stipulations by Individual Patentees.

The next problem is to determine whether this exchange of patent rights is restrictive in nature or whether it is a simple regulation to promote commerce and industry. It is necessary to examine the exact bounds of the exclusive privileges accorded to an individual patentee; and to examine the character of the additional limitations imposed by the anti-trust laws upon the action of the group in the interchange of patent rights.

An individual has the right to exclude all others from using or selling the patented article. He may transfer this right in part or in whole. Should the patentee allow others

to use his patent he may impose conditions on the licensee. Normally these conditions simply protect the patentee in the enjoyment of his exclusive rights. But there are certain restrictions placed upon these licensee agreements by the Clayton Act.

A patentee cannot, in transferring to another a patent right, lawfully fix the price at which the purchaser may resell the article. Such a condition tends to eliminate competition and is not necessary to protect the interests of the patentee. A patentee may set up agencies for the marketing of his products, and thus transfer the custody of his patented goods to an agent but he does not forfeit his control over the terms of their disposition. But it has happened that sometimes the patentee has sought to retain this control by reserving title to the goods but divesting himself of all the rights and responsibilities of ownership. Under such circumstances the law regards the substance rather than the form of the arrangement, and disapproves the practice of resale price maintenance. In the Strauss case, for example, the patentee, in transferring the patented phonographs to dealers, professed only to license such dealers to use them and to relicense consumers to use them upon specified terms. The Supreme Court said, "Courts would be perversely blind if they failed to look through such an attempt as this 'license notice' thus plainly is to sell property for a full price and yet place restraints upon it which are obnoxious to public

interest. This scheme of distribution is in fact a mere price fixing enterprise."**

This restriction upon price fixing does not apply to a genuine licensing arrangement, in which the licensee is granted the privilege of making and selling the article or device protected by patent rights. The patentee may stipulate as high a royalty as he chooses to exact, may specify the number of patented articles the licensee may manufacture, where he may sell them and the prices at which he shall market them. These vested rights simply enable the patentee to exploit his monopolistic advantages without going beyond the limits of the patent monopoly.

What neither the licensor nor the licensee may do is to regulate the price of a patented article after it has been cast upon the stream of commerce. In other words, the exclusive rights vested in a patentee cannot be utilized as an instrument for restraining trade or achieving a monopoly after they have been fully exercised and completely exhausted. It naturally follows, therefore, that it is beyond the legal power of a patentee, or of any one licensed to manufacture under his patent, to fix the terms of sale of unpatented goods, in the production of which the patented device may have been widely used by purchasers from the said patentee. Since the power to control price which accompanies the grant of patent rights is designed primarily to promote the public welfare

**Straus v. Victor Talking Machine Co., 243 U.S. 490 (1917).

by providing an effective incentive to invention, the exercise of the power is restricted to articles directly protected by patents, and only in so far as these articles have not left the possession of the licensee, or the patentee. It naturally follows, therefore, that it is beyond the legal power of the patentee, or of any one licensed to manufacture under his patent, to fix the terms of the sale of unpatented goods, in the production of which the patented device may have been used by purchasers from said patentee or licensee. And it is still further beyond the range of the patent monopoly for the patentee to attempt to control the prices of unpatented goods or accessories sold by a vendee in conjunction with the patented articles he has purchased.

In the second place, with regard to the stipulation of conditions of use, as distinct from the conditions of sale which have just been considered, a patentee cannot lawfully impose upon a licensee to use his patented device or upon a purchaser thereof, the requirement that such device shall be only in conjunction with materials or machines, patented or unpatented, furnished or prescribed by the patentee. This simply means that the government is unwilling to extend the exclusive privileges of the patentee beyond the ordinary scope of the letters patent.

The most comprehensive cross-licensing plan of proved feasibility now in operation contains no provision for

for the payment of royalties among its members. The freedom and advantages of trade co-operation is well illustrated in the following description of the National Automobile Chamber of Commerce.

One of the major activities of the National Automobile Chamber of Commerce is the arrangement made between its members for the cross licensing of hundreds of patents. This patent agreement covers all the items except basic patent rights materially affecting design. A method has been mutually agreed upon whereby certain patents are determined as basic, and an arrangement has been made so that a suitable royalty can be collected when such patents are used by other than the patentee. This working arrangement has resulted in immeasurable savings to the industry, through the elimination of annoyance and cost of litigation regarding patent infringements, and at the same time has enabled members to enjoy the protection and privilege represented by the use of the basic patents.

The broad feature of the plan is the fact that any automobile company that has been in production a year or more, which has a proper standing in the trade, and which conducts its business in legitimate fashion, is made welcome to the Chamber and given the rights under all the patents of the other members who are parties to the agreement. In return it contributes rights under such patents as it has and such patents as it takes out prior to 1925. The patents covered by

this agreement are what have been described "development patents." Over six-hundred patents have been submitted to the Chamber for cross licensing prior to 1922, and it is stated that the number now is over one thousand.

3. Interchange of Credit Information.

This is one sphere of association work which may be pointed to as an example of successful business co-operation, principally in exchanging credit information and credit terms. Standardized forms are drawn up in order that the routine work of reporting might be minimized and the equality of credit treatment for all members might be measurably approached. Locality, rather than trade, was the common basis of associated efforts in credit research. It was only when the earlier methods of securing credit information broke down that the trade associations found in this work a truly helpful service for their members. Lately, it has become a common activity of the trade association and in some it is the principle single line of activity.

The methods employed usually conform to two types. One of these types confines itself to the accumulation of the actual "ledger experience" of the association members with particular patrons. This information serves to show the amount of a customer's purchases, the frequency of his purchasing, the stability of his custom, and the promptness of his debt liquidation. This method is inadequate unless such information is exhaustive of all the accounts reflecting the credit-seekers

current operations. The other type involves the assembly from all pertinent sources of judgments concerning the credit applicants character, business capacity, financial responsibility, and capital, and these data are commonly supplemented by a statement of resources and liabilities. This method attempted to secure information concerning the moral risk involved, as well as information concerning the concrete circumstances of the prospective purchaser.

The methods by which this activity is carried out varies according to the size of the association and the importance of this service to its members. Commonly, the work involves the establishment of a bureau directly responsible to the executive committee of the association. There are also many outside organizations performing this service for profit, the trade association merely urging its members individually to subscribe to the one agency.

Among those associations carrying on this interchange of credit information is the Motor and Accessory Manufacturer's Association. This organization issues daily, monthly, and periodic credit bulletins, special reports, and grading of individual accounts. This service has been in existence for fifteen years. The credit exchange bureau of the Radio Manufacturer's Association issues monthly a list of delinquent accounts as reported by its members. This list is supplemented by an exchange of ledger experience on request.

The credit service of the Steel Barrel Manufacturer's Institute embodies the following features:

1. A monthly report of all accounts 90 days or more past due.
2. A monthly report of all settlements by trade acceptance or note.
3. Inquiries are received currently from members regarding the credit of prospective purchasers.
4. When an account is 90 days old it may be reported to the institute, and a letter is written to the debtor stating that unless settlement is made by a certain date it will be necessary to report the situation to all members.
5. If the account is not paid promptly after the first letter is mailed all members are notified and a second letter is sent to the debtor, stating that if the account is not paid by a certain date it will be necessary to turn it over to an attorney for collection. This plan has been found very satisfactory, as it brings in the great majority of settlements without the cost of litigation.

A. The Validity of Credit Services.

There has never been any doubt about the lawfulness of the assembly of information regarding the financial standing and personal character of applicants for credit or the distribution of this information. It is of course assumed

that the information is truthful. Nor does co-operative action in such matters diminish competitive industry. On the contrary, such co-operation leads to sound extension of credit and to adjustment of credit terms in conformity with the real status of buyers and sellers. The parties in immediate interest, and ultimately the consuming public are the beneficiaries of a more intelligent business policy. Of course there are always possibilities of some one encroaching on the public interest or upon private parties. Let us see in what ways the practice of interchanging credit information may depart from the clearly lawful realm.

B. Agreements to Withhold Credit.

Is an agreement among credit grantors not to grant credit to applicants when the latter fail to satisfy certain minimum standards lawful? Such an agreement might be held to be an unlawful restraint of trade, regardless of the standards set up by the association. No one can question the advantage to sellers of the adoption and enforcement of proper limits of credit granting; and eventually the reduction in bad-debt losses might be expected to accrue to the benefit of the consumers. But such an arrangement cuts substantially into the play of competitive forces. the freedom of action of both buyers and sellers is deliberately curtailed and the abuse of the privilege is plain. The coercion which might be exerted to marshall an entire trade

into line by a discriminatory exercise of the power to withhold credit would probably constitute illegality.

This point of view is reflected in the provisions of several equity decrees in recent trade association cases. In the cement decree the defendants were enjoined from "agreeing to refuse to make sales to particular customers or from agreeing upon circumstances or conditions which shall exclude customers from being extended credit."* The tile decree specifically forbade defendants "to formulate and establish or to retain in effect any requirements which shall exclude any customer from securing credit or shall impose any limitations or conditions whatsoever upon the credit granted."** The concerted denial of credit opportunities to trade customers is deemed to be equally subversive to sound public policy, when achieved through tacit understanding rather than express agreement. It frequently happens that without an explicit organization by all concerned to refuse credit to applicants ascertained to be in a financial position regarded by general consent to be unsafe, there is a tacit understanding to the same effect. This is generally evidenced by a list of undesirable debtors. It is exceedingly difficult to manage such a circular that it will not be subject to the construction of a "blacklist". Such credit circulars undoubtedly exert a distinct influence upon sellers in the direction of rendering their credit policies toward the listed buyers uniformly

*U.S. v. Cement Assn., U.S. District Court, S.D. New York, In equity, No. E., 22-25, Dec. 13, 1923.

**U.S. v. Tile Manufacturer's Credit Assn., U.S. District Court, S.D. Ohio, In Equity, No. 21, Nov. 26, 1923, sec. 5.

restrictive; their usual effect is to destroy or at least curtail substantially the credit privileges of these buyers in the entire market. The circulation of a list by a trade association of dealers alleged to be poor credit risks is frowned upon by the courts.

C. The Establishment of Uniform Credit Terms.

One of the basic advantages generally admitted in a competitive system is that it permits a wide range of adjustments in all details of business dealing to fit the various circumstances of concrete situations. This adaptability is largely accomplished through the difference in terms upon which business is conducted. Concerted action designed to develop uniformity of credit terms serves to obstruct these adjustments. It is the tendency however for credit terms to become definitely stereotyped in well established lines of business. There probably exists in every line of trade a normal maturity for current obligations, which is based upon the special characteristics of the consumptive demand or upon the nature of the productive uses of the goods transferred. Moreover, promptness in meeting credit obligations is sometimes a habit. It may be argued therefore that standardization of credit terms will not cause any ill effects upon our social structure and might even eliminate delay and friction in the collection of claims.

There are counter-circumstances however which might make such trade association activity invalid. In the first place

there can be no definite assurance that the wisdom of the group will evolve just the right combination of terms any more quickly, and with greater freedom from the process of trial and error, than the shrewd speculation of the individual creditors. The latter is stimulated by the urge of self protection, and is sharpened by the presence of diversity practice; the former is reassured by the prospect of competitive equality, and is dulled by the absence of contrast and comparison. Then, there are the inherent limitations upon this phase of activity. There are always exceptional cases which require exceptional credit treatment. There are the buyers who are doing business on a narrower margin of working capital than is customary in the trade. There are those whose business turnover is slower, but perhaps surer, than is generally common in a certain trade. There are many such special occasions which arise and which require more lenient or more exacting treatment than usual for the settlement of a particular obligation.

All of these situations may be cared for under the elastic credit terms existing in a competitive system. Under the rigid standardization of credit terms by joint agreement, on the other hand, there exists no orderly adjustment to such situations. The present attitude of the courts is that the enforcement of impartiality in credit granting is as essential to the maintenance of fair and equal treatment as the regulation of rates and services for public utility patrons. Credit granting

is not a mere incident or insignificant factor in the operations of modern business. Credit terms constitute a vital feature of all commercial transactions into which they enter.

In summary, then, it appears that trade associations may lawfully organize facilities for the interchange of credit information concerning their trade customers. The information is available to its members only upon special request with respect to specific applicants for credit, and each of the associates formulating his credit policies independently of the group as a whole. Whenever a credit bureau, so organized, reaches much beyond this simple function, it tends to obstruct the free play of competitive forces and is likely to encounter legal obstacles. The practices objected to are the publishing of a "black list", the announcement in advance, of the names of persons or firms not acknowledging this list, and agreements upon uniform terms of credit. The function of the credit service is to render competition for credit sales more enlightened and more prudent.

9. Joint Purchasing Agreements.

One advantage usually cited in defense of corporate consolidations is that they are enabled to make substantial savings in the purchase of raw materials and supplies. By buying in larger quantities than would be feasible for a single unit and by being in a position to select the choicer and more dependable sources of supply, a large corporation can keep down its

costs below those of its smaller rivals. It appears that this saving may be achieved through co-operation among independent enterprises as well as through large mergers or consolidations. As trade associations are established institutions widely representative of particular branches of industry they are the natural agency for co-operative effort. Formerly group purchasing was confined to temporary organizations of farmers and consumers. As the industrial structure was a competitive one the principle of co-operation was slow to show itself. Lately, however, trade associations have taken up the work of joint negotiation of purchases. Practical plans for the joint purchase of materials and stocks by members of trade associations have been evolved. Some of these plans are questionable in character and sometimes involve legal controversy. Its legal status is dependent upon the object pursued in each instance and the effects of the arrangement upon the market. Joint negotiation of purchases necessarily involves some diminution of competition in the market; but it must amount to an unreasonable restraint of trade before it becomes illegal under the anti-trust laws.

Ordinarily trade associations are considered as groups of sellers. Where attention of trade association members has been called to group purchasing it has been exceptional and incidental. The courts have been much more lenient towards groups of purchasers than towards groups of sellers. Ordinarily

consumers' organized efforts towards group buying has been commended and even encouraged by the governmental authorities. These efforts were designed to reduce prices, and they sought to accomplish this by restricting competition on the buying side of the market.

a. Validity of Joint Purchasing Agreements.

Let us see how far business rivals associated in a common trade association may unify their interests in buying, even if a like unification in their selling interests might be unlawful. The first case in the federal jurisdiction arose in 1909 and presented simple facts to be decided. The plaintiff was a firm engaged in the general merchandise brokerage business. It complained of its loss of trade, occasioned by the formation of the defendant corporation, the Arkansas Brokerage Co., to do the buying directly from manufacturers and manufacturers' agents for the five principal jobbing houses in the district. The defendant, it was admitted did all the purchasing for its five stockholder firms, and had also extended its business by taking over accounts of outside jobbers. It had become the authorized representative in that territory of many manufacturers. The plaintiff firm was forced out of business, and in view of the above circumstances brought suit for treble damages under section seven of the Sherman Act. The court decided that in the mere fact of combination for negotiating purchases there was no violation of the anti-trust law.* In 1924, five manufacturers

*Arkansas Brokerage Co. v. Dunn & Powell, 175 F. 899 (1909).

of iron and steel products on the Pacific coast were cited before the Federal Trade Commission for entering into a "combination to suppress competition in the purchase of raw materials used in their plants." In carrying out this conspiracy it was charged that they had mutually agreed to confine their purchases of scrap iron and steel, which constituted their chief raw material, to a corporation, known as the Steel Mill and Foundry Supply Co., organized and controlled by them jointly.* Since the respondents were practically the only users of such scrap on the Pacific coast, and since it is not practicable to ship material of such weight and value over the mountains, it was alleged that these associated manufacturers were enabled to purchase their raw material "at far below the fair market value by forcing those who had "scrap" for sale to deal through the Supply Co." A similar complaint arose in February, 1924, against the Boston Automobile Dealer's Association, Inc., charging that its members had "combined together to agree upon and fix uniform and maximum allowances and valuations for used automobiles taken by them in trade."**

It seems to be established, therefore, that in so far as a legal issue may be deemed to be settled prior to its determination by the Supreme Court, that not under all circumstances is a combination among buyers to regulate or negotiate their purchases, beyond the reach of the anti-trust laws.

* Complaint No. 1120. Advance Sheets, F.T.C., Feb. 27, 1924. Dismissal announced, May 9, 1925, no interstate commerce being shown.

**Complaint No. 1103. Advance Sheets, F.T.C., Jan. 12, 1924.

It is apparent also that some arrangements of this character are clearly within the law. When the associated purchasers tend to dominate the market in a given area the concert of action becomes subject to the prohibitions of the anti-trust laws. It appears therefore that the field of opportunities for joint purchases and its activities is neither unlimited under the law, nor so constricted as to amount to a grave handicap upon this type of trade co-operation among independent business units.

10. Standardization of Products.

Industrial standardization consists in singling out specific products and materials, in settling upon their performance properties and dimensions, and in concentrating upon them both in production and in the use to the end of bringing about the greatest possible industrial efficiency. Such standardization includes:

a. Nomenclature, such as definitions of technical terms used in specifications and contracts, also technical abbreviations and symbols.

b. Uniformity in dimensions necessary to secure interchangeability of parts and supplies, and the interworking of apparatus.

c. Quality specifications for materials and equipment, as composition, form, and structure.

d. Method of tests to determine standards of quality and performance.

e. Ratings of machinery and apparatus under specific conditions.

f. Safety provisions and rules for the operation of machinery and apparatus in industrial establishments.

Safety codes and standards of practice.

Among the many advantages of standardization are the following:

1. The stabilization of production and employment, since it makes it safe for the manufacturer to accumulate stock during periods of slack orders, which he cannot do with an unstandardized product.

2. It reduces selling costs. Possibilities of reduced costs are generally even greater in distribution than in production.

3. It enables the buyer and the seller to speak the same language and makes it possible to compel competitive sellers to do likewise.

4. It lowers unit costs to the public by making mass production possible, as has been shown in the automobile industry.

5. By simplifying the carrying of inventories it has made possible quicker deliveries and lower prices.

6. It eliminates indecision in both production and

utilization.

7. It is one of the principal means of getting the results of research and development into actual use in the industries.

8. By concentrating on fewer lines, it enables more thought to be put into designs so that they will be more efficient and economical.

9. Standardization is increasingly important in foreign trade. There is strategy in nationally known and recognized "American" specifications.

There are other minor advantages accruing from standardization and simplification of products but the above are the more important. The process of industrial standardization may be conveniently divided into four stages, namely, (1) by individual firms; (2) by societies and associations; (3) on a national scale; (4) on an international scale.

Standardization by individual firms is now well developed in all the principal industrial countries. It has been the essential factor in the development of mass production which has been the chief contribution of the United States in the development of industry. The extensive company standardization developed during the last half of the 19th century gave rise to standardization by groups. This work has been carried out by technical societies, trade associations, and Government departments.

Under the modern factory system of production which includes large scale organization and minute division of labor there is an increasing tendency toward standardization of processes and products. When industrial methods are uniform the basic advantages of the division of labor can be fully realized. Standardization of processes or industrial technique means standardization of products. However, these developments are confined mostly within the limits of the individual factory. In the absence of combination, the tendency to standardization does not reach beyond the bounds of the several producing organizations. Moreover, these individual producing firms, do not cover the entire field of the industry, because the factors of space, as reflected in transportation costs, and of executive capacity, as reflected in overhead costs, place definite limits upon the concentration of production. Therefore, while the tendency to standardization constitutes a recognized characteristic of production there are counteracting forces, which tend to hinder its growth.

Again, the modern growth of population and the extension of markets create a demand sufficient to absorb immense outputs of great variety. A diversity of products is desirable in so far as it reflects the real and actual desires of the consuming public. However, if we treat standardization of production as an economic problem of production and marketing efficiency, then we may eliminate the arguments of social



theory. Since production is distribution among a number of producers without coordination and as productive activity cannot anticipate the nature of the demand of the consumers, many unstandardized products are thrown upon the market which apparently do not serve for economic purpose. It is because of this situation that co-operative efforts, through trade associations, have been made to achieve greater standardization and simplification of products.

Where the competitive economic process is not regulated, a multiplicity of goods which serve essentially the same purpose, are thrown into the market. Current industrial activity illustrates the variety of grades, colors, styles, designs, shapes, and so forth, of consumer's goods, whose utility does not depend upon these characteristics. The tendency of every producer is to try to meet or create a demand for a product which is in some way unique. In this way he assures himself, at least temporarily, of an exclusive control of supply, with the accompanying financial advantage that flows therefrom. From the public standpoint, this procedure involves economic waste, and tends to sacrifice volume of output. These wastes extend to market operations, because of the increased cost of carrying large inventories of the sundry varieties of merchandise, of which sales are infrequent. The cost of the clerical service and the advertising program is likewise increased. The burden of these increased costs are borne by

the consumer. It is true that the consumer is somewhat to blame for these conditions because of their whims, prejudices, and their individualism. Accordingly, a policy of deliberate standardization might thwart the genuine desires of consumers, even though these desires are irrational. But, there is no reason for not trying to adjust somewhat these wasteful conditions, especially where extremes are reached. Common sense should help to correct flagrant cases through foresight and organization. Some degree of standardization is found in all modern economic communities. It is so essential that weights and measures be standardized that the state imposes its power to accomplish this end. Tradition and common usage have established some uniformity of grades, styles, sizes and measurements. In recent years trade associations have stimulated standardization.

Co-operative Standardization Activities;

The work of standardization and simplification of productive processes imposes restrictions upon competition. Normally, a manufacturer may evolve his own grades, styles and sizes and adjust himself to what he believes to be the desires of the consumer. Standardization interferes with this process because producers and distributors mutually limit their judgments and points of competitive appeal. In the Portland cement industry, for example, the adoption of a standard specification for cement appears

to have resulted in a product of substantially uniform quality. This limits the producer's rivalry in their appeal for consumer demand in such matters as service and price differences. If service and price tend to become standardized, then the maintaining of quality competition is somewhat controlled. In general, however, the regulation of competition which springs from standardization activities is calculated to promote the public interest. Standardization of products by elimination of unnecessary grades and sizes, means savings in manufacturing and marketing costs.

The courts in practically all cases involving the above question appear to recognize the right of trade associations to further standardization. There are however limits to which trade associations may go along the line of standardization. For example, the arbitrary elimination of cheaper grades, because they are less profitable than higher grade products would not be justified. Similarly, agreements not to market "seconds", which are sometimes made in certain industries, would not be approved. The above issues have been termed by the Department of Commerce "simplification", but this is an aspect of standardization.

Trade Association Trade-marks and Price Standardization:

Closely related to standardization agreements is the practice of adopting an association trade-mark or label. This is calculated to stimulate demand by giving

assurance to the buyer that the goods bearing the mark have been produced in conformity with some standard. If the association label is used merely as a basis for co-operative advertising and is used in connection with individual identification marks, each manufacturer standing behind his own products, the practice would be an approved form of associated action. The use of a common label is a simple announcement of membership in a certain trade association. It would not affect competition for it does not signify any joint marketing scheme.

The use of a common label is a simple announcement of membership in a certain trade association. It would not affect competition for it does not signify any joint marketing scheme. The question of legality seems to hinge upon whether or not the dominant label or mark, by which the public identifies the goods, is that of the individual or the group. If the individual mark remains dominant there is nothing unlawful in the subordinate attachment of a group label. Many types of articles have been marketed under both association and individual labels without interfering with competition. Oranges, lemons, walnuts, milk, and lumber have been sold under double certification without proving detrimental to the public. Adoption of common trade labels and standardized agreements may be abused but in normal cases they tend to regulate, legitimately, competition. They are designed to eliminate wastes which are the result

of unco-ordinated productive activity. They also provide the consumer some protection against inferior quality of products which he buys.

F. Development of Business Standards.--

1. Sources of Business Standards.

Trade associations are undertaking to develop what they deem to be necessary and desirable standards, of business conduct. Voluntary co-operation in this direction is not confined to trade associations. The United States Chamber of commerce and numerous Rotary Clubs take an active part in the elevation of business standards. "Custom", is one of the underlying principles for forming business standards. Within most trades there exist many usages handed down through a long past which are distinctive. For example, in the coal trade it is customary to sell bunker coal by long tons and domestic coal by the short ton. The professions such as law, medicine, teaching, and the like are based upon tradition, supplemented by later enacted laws. In business, however, it is only within recent years and largely through trade associations, that ethical principles have been formulated and a means of enforcement put into effect. While it is difficult to measure the benefits from these efforts it is to be noted that rigid codes seem to be taking the place of the loose conduct of individuals.

2. Nature of Business Ethics.

A business code of ethics is a general statement of the course of conduct in a given business or industry, which is in accord with the prevailing moral principles of those engaged in that trade. The emphasis is ordinarily placed upon those trade relationships in which there has developed abuses, which in the minds of those in the trade need correction. These may be employment conditions, customer relations, or competitor relations.

It should be noted that the guiding principles are based upon the common notions prevailing in the trade of what constitutes proper standards of honesty, fairness, and sound judgment. While such codes are not unanimously adopted they do represent the body of opinion among the whole number of firms in a trade. These codes attempt to develop business standards on the basis of the particular needs of firms engaged in a given industry. Truth in advertising, is one beneficial code widely adopted as is that of fair treatment of employees. Of course codes of ethics bind only the ethical.

3. Uniform Contract Forms.--

This practice is similar to an ethical rule and tends to standardize the conduct of business. Conditions in the sales contract concerning credit, delivery, risk, etc., have been regulated and tend to eliminate litigation. This helps to facilitate negotiation, in sales

contracts. There is imminent danger however when the provisions in regard to price policy are regulated, for this leads in many cases to price manipulation. But the practice of adopting "uniform contract forms" has bot been subjected to legal attack. These uniform forms do carry out their purpose of making more certain and definite business dealings. In many forms blank spaces occur which allow insertions to be made in particular cases, thus giving leeway to individual firms or changes in special cases.

Government Co-operation in Standardization.

The federal Government is interested in industrial expansion for two reasons. First, as a purchaser, it is interested in a wide range of specifications for materials and apparatus, and, second, through its great service and research bureaus, whose function it is to serve industry and commerce, it is interested in innumerable standardization questions. Thirty-three branches of the United States Government are officially represented on sectional committees of the American Engineering Standards Committee. The Bureau of Standards of the Department of Commerce, the Forest Service of the Department of Agriculture, the Public Health Service and the Treasury Department, are all co-operating in standardization projects. The Department of Labor is playing an important part in the safety code program. It publishes approved safety codes as Government documents and designates representatives of labor on all sectional committees dealing with safety programs.

International Standardization Activity.

There are now national standardization bodies in all European countries and Japan as well as in the United States. The general organization plan in these countries is to have a small but active national committee on policy and procedure and to have actual standards made by sectional committees. Each sectional committee is designed to be a

cross section of the industrial groups which can contribute to making the standard and includes representation of producers, consumers, public authorities and professional engineers. The national committee in general does not initiate standards but waits for the development of desirable standards through initial stages and then determines the policy and procedure to be used in making the standard. Drafts of contemplated standards are published widely for criticism and comment, and the general principle is followed of fitting standards to the needs of the industry. Three of the national bodies are under the direction of their respective governments, but in the other cases the standards committee is set up and administered as an industrial committee having government representation in membership.

This type of organization has been successful, and in Great Britain there are four-hundred and seventy-five sectional committees at work. In Germany about sixteen hundred standards have been made. In all countries executive and adequate financial support is present, in some cases through the government itself.

PART IV

Part 4

Trade Association Activities Not Related to Competitive Conditions.

The activities described in this chapter are those which serve to promote improvement in many elements of commercial and industrial activity. They tend to stimulate efficiency in production and marketing operations, to encourage goodwill in labor relationships and to render trade information more effective. In purpose and effect they are designed to achieve ends which are deserving of public approval. The fostering of advance in the technical arts, for example, clearly operates to the general economic advantage of the community. This group of association activities are free from attack under the anti-trust laws.

1. Nature and Advantage of Co-operative Research.

One of the outstanding developments in the growth of this movement is the setting up of a clearing-house of information. The service rendered consisted of informing members of ways and means to improve commercial and industrial processes and the introduction of new methods of procedure.

Reasons for the development of co-operative research sprang out of the inability of individual firms to finance new processes and the common interest of all to conserve social resources. There is also the profit which accrues from new processes and the pride which members of

an association have in contributing to the advancement of the useful arts. This co-operative effort cannot be better carried on than through associations already formed and going. They provide the logical medium to carry on this work. The British Government has even subsidized industry-wide associations which engage in scientific research. This policy has been established not so much as a maintenance fund as it has to act as a stimulus to promote research activities in the industries. The trade association receiving grants from the government is expected to become self-supporting within five years.

a. Difficulties of Research Activities.

Research problems are varied and extensive.

Determination of convenient sizes of consumer packages, instructing the consumer in the use of products and preservation in the storage of raw materials are among the many problems. The Cotton Industry Committee inquiry calls attention to the following: the value of physics and chemistry in the cotton industry; the value to the trade of testing the tensile strength of fibers; the chemistry of starch which is used in large quantities in the industry; and the study of cellulose. The above are the outstanding facts presented in an argument for a research association in the cotton industry.*

The National Canners' Association has maintained

* Bulletin of the National Research Council, Vol. 1, p.20.

a technical research laboratory for many years. They concentrate their attention upon problems of manufacture, but these have led to problems of the consumer later on. Their research problems have reached forward to the dietary value of canned goods and backward to the producer of tinplate.

b. Organization of Research Operations.

One of the big problems is the type of organization through which research work is to be carried on. There may be a loose and informal exchange of data and conferences, or a process of extensive experiments by an independent staff of investigators. Methods may depend upon the nature of the inquiries to be made. If an investigation concerning wage payments is made it will depend upon the assembly from members of the accumulated experience of the trade and the co-operation of the members in making studies under controlled conditions. This problem would involve the nature of the work and the special characteristics of the workers. If the inquiry involves selling efficiency the information would have to be supplemented by field work. Among other things, account would have to be taken of climatic conditions in the various regions, the temperamental qualities of potential consumers, the potential buying power and even the behavioristic traits of the consumers. In such an investigation, a survey of "sample" territories would be appropriate. On the other hand, a determination of the physical properties of a product which will

adapt it to more lasting use would be a problem for the independent research laboratory without the aid of the trade associates.

The organization of the research work depends upon available funds also. If funds are ample, trained experts would be employed as they are in the Institute of American meat Packers. Such corporations as the American Telephone and Telegraph Co. and the General Electric Co. are among the leaders in this type of research organization. Other trades have opportunities to carry on the work without great expense through the co-operation of the Federal government. The Department of Commerce welcomes the chance to promote industrial progress, through lending the use of its technical equipment to approved scientific investigators, maintained by trade associations. For example, the Portland Cement Co. has an arrangement whereby it is to furnish six men, three chemists and three engineers, for an investigation to be conducted by co-operation with the staff of the Bureau of Standards, which will cover all phases of the cement manufacturing processes as well as the economic uses of cement.

Again, there exist co-operative organizations for assisting in research work, which are supported by allied lines of trade. The Bureau of Industrial Research is one agency of this type. These agencies maintain a staff of experts and specialists in economic and statistical science. Their

investigations are of a general scope in order to benefit the diverse trade associations by which it is supported financially.

The facilities of many universities are available and many trade associations have established research fellowships for graduate students. In some instances these co-operative arrangements have been more highly developed as in the case of the Leather Research Bureau, established at the University of Cincinnati, with the support of the National Tanners' Council. Of course in the latter case, the university authorities select the problem and methods, though subject to the suggestions of the trade association. Another instance of university co-operation is the University of Pittsburg. Here, there has been established the Mellon Institute of Industrial Research, for the purpose of providing suitable equipment and a favorable environment for research workers supported by trade associations. According to a report by a Director of the Institute, out of a total of fifty-two fellowships in force in 1924, there were fifteen established by trade associations. The Bureau of Business Research organized by Harvard University in 1911, and the Business Research Bureau established by Northwestern University, in 1919, undertake, investigate, and make reports on commercial policies, conditions, and practices, on behalf of trade associations, at their request. The Harvard Bureau carried on for several years a regular service in the analysis of cost trends and the study of managerial problems

for the American National Retail Jewelers' Association and have done work for many other trade associations. These services rendered by universities are usually performed at cost.

In these various ways trade associations have tried to build more secure foundations for the industrial and commercial organizations of which they are representative. This form of activity is constantly growing and is reflected in the amount of periodical literature available about trade and industry.

2. Cost Finding.

a. Uniform cost finding.

This development through associated efforts in education, of measuring various elements of cost involved in producing and distributing goods, is of the same constructive character as that carried on through research activities. The function of cost finding is to educate the members in a trade in the analysis of productive operations for the purpose of eliminating wastes and practicing economy. The purpose of education in cost finding is to induce an intelligent control of the productive operations in each independent establishment. The cultivation of more accurate knowledge of costs incurred in manufacturing processes, depends upon instruction in the principles of cost accounting and upon a demonstration of the ease and advantage of installing and operating a suitable system.

b. Cost determination.

Prior to the development of minute division of labor, a manufacturer could without much difficulty ascertain the cost of production of his goods by the simple device of keeping a record of his expenditures on any job. There were no such terms as interest, overhead charges, profits, or wages of management. Ordinarily, whatever was obtained by the manufacturer above his direct outlays in cash, was considered his personal income. Radical changes have taken place in the world of modern industrialism, both in the size of business and the relative proportion of the factors involved. Today, capital to a large extent has been substituted for labor in many productive processes. The result is that a larger proportion of the total cost of producing most goods has come to be represented by factors which receive no direct compensation. Wages, of course, are currently paid; but, payment of interest may be indefinitely deferred and even the depreciation of capital equipment means replacement over a long period of years.

Again, the larger scale of operations in the modern industrial system, with its minute division of labor, means more attention to planning, supervision, and inspection. The finished product today passes through so many hands and processes that methods of control and supervision have become necessary. As a result administrative expenses have increased with the growth of "piece work" and large scale production.

Expenses of this nature cannot be charged to specific jobs but represent overhead charges.

The ascertainment of the unit costs of most types of goods has become a very complicated problem. Many costs are only approximate. Trade associations, which represent many of the best types of firms in a given trade, should make an effort to instruct its members in finding the costs of doing business. Those in a given industry less cognizant of costs in that business are the smaller firms. These firms have had limited resources and in some cases scant experience. As a result the procedure has been to carry on the experiment in the majority of the larger plants of an industry and pass on to smaller plants the conclusions and results which were decided upon by the trade associations' experts.

The simplest service rendered by these associations is simply in explaining the general principles of cost accounting and describing the numerous methods of cost analysis. This instruction may be followed by an effort to persuade the firm to adopt the cost system. The trade association agent would point out the numerous advantages in adopting such a cost system. In some cases an entire system of cost accounting is worked out, suitable to an industry, with recommendations for its adoption.

Generally, education in cost financing has resulted in the endorsement of a standard cost system for a given trade.

Many members do not adopt this system upon recommendation. The American Face Brick Association, for example, reported in 1922, that only 15, out of its 110 members had installed complete cost systems, based upon the associations' plan.* In some cases, members have installed individual systems which conform in essential respects to the association standards. There are numerous obstacles to the general adoption of a uniform system of cost accounting by the members in an industry. The difference in size of plants, determines to a great extent, the variety of records required and the amount of data to be collected. Sometimes a product may be a by-product of one manufacturer and the principal output of another. Distinctive problems of this nature account for the report of the National Lumber Manufacturers' Association that, "because of the widely diversified methods of logging and manufacturing it is almost impossible to adopt a uniform cost accounting system that would be applicable for the various lumber producing regions as a whole." **

But, regardless of the obstacles encountered or the methods pursued, trade associations are performing a constructive work, which tends to stimulate efficient production.

*See "National Trade Associations," National Association of Manufacturers, New York, 1922, p. 46.

**Ibid., pp. 148-9.

Demand Stimulation.

Co-operative Advertising.

Advertising, as an association work has become more and more important. The function of advertising, as carried out by trade associations is to stabilize the market and to adjust the gap between production and consumption. Trade associations, through co-operative advertising, carry out this work very effectively. The advertising campaign is for the purpose of advancing the industry as a whole. Although, immediate returns may not result to the individual contributors, there does result a persistent demand for the products, and a regularity of flow of production, which tends to stabilize the trade.

Joint Publicity Ventures.

The most outstanding examples of joint advertising campaigns are to be found among those industries in which small-scale production is the general rule, but whose product has a potential sale in an extensive market. Raisins, oranges, lemons, and walnuts are produced, not by individual enterprises in large quantities, but they are collected and distributed throughout a national market. Dairies are also in a similar position. They produce in small volume compared to total production. By organizing co-operative publicity campaigns the associations in these various fields have been enabled to extend their market without placing an unbearable

burden upon the small individual producer.

New industries are another class of undertakings which have benefited through joint advertising campaigns. The National Slag Association has advertised to make known the use of slag as a building material and for road making. The Plywood Manufacturers' Association carried on a joint advertising campaign to open up new markets for their little known product**This publicity campaign is valuable to new industries for two reasons: first, their new product becomes widely known; and, second, firms dealing in like products add this new product to their line of stock.

Some industries find co-operative advertising valuable to keep before the public familiar goods of a standard quality. Such an article as Ivory Soap illustrates the above campaign. New substitutes or even like products of fine quality, appear on the market and compete with the old standard long familiar product.

Another group consists of those who combat a prejudice or propaganda against their product. The best known of these is the coffee trade. The Joint Coffee Trade Publicity Committee, representing the Brazilian planters, the Green Coffee Merchants of America, and the National Coffee Roasters' Association have carried on a publicity campaign to combat consumer prejudice**Likewise, the Institute of Margarine Manufacturers has from time to time issued

* See "Engineering World, June 15, 1919.

**See Felix Coste, "Guidelines for Co-operative Advertising Campaigns," Printers' Ink, June 19, 1924, p. 158 et seq.

bulletins concerning the food value of their products. The most practical way of extending this publicity is through trade associations, which represent through their membership, the industry as a whole, and whose activity may be supported co-operatively.

Methods of Co-operative Advertising.

One of the best methods employed for joint publicity is that of fairs and exhibitions, to which the public are invited. Motion pictures and radio are also popular far-reaching means. Some trade associations have adopted a common trade-mark to identify the product of their members. An agreement upon a common slogan, both for individual use of the associates and for co-operative publicity has become rather general. Several of these slogans have been made part of the common parlance of the men in the street, for example, "Say It With Flowers"; "Save the Surface and You Save All"; "Cypress, the Wood Eternal". Through pamphlets, demonstrations, and similar methods, instruction is also afforded in the proper use of the product of an industry or the uses to which it may be put. The most common method of procedure is a direct appeal to consumers through newspapers, magazine and billboards. Among a group of 63 associations reported to be advertising their industries through periodicals are the following prominent organizations: The California Fruit Growers' Exchange; the Florida Citrus Growers'

Exchange; the National Electric Light Association of America; the Portland Cement Co.; the National Paint, Oil and Varnish Association; the Copper and Brass Research Association, and the Southern Pine Association*.

An illustration of what the Southern Pine Association is doing is typical of other association work. The above organization has an Advertising Committee which has distributed calendars and display cards among lumber dealers, and has supplied newspaper advertising cuts for local use. Advertisements have been inserted in a number of national periodicals. Books and booklets have been published dealing with the advantages of wood construction, and these have been distributed, annually, to the public, dealers, contractors, and architects. Sometimes technical experts are employed to lecture on better home-building, or to answer questions on the choice of materials or the proper use of the various kinds of wood. Motion picture films are loaned for exhibition purposes at conventions or fairs. Newspapers have been encouraged to devote special sections to home-building. All the above activities are for the purpose of maintaining and enlarging the market for the southern pine or yellow pine industry.

Financing Co-operative Advertising.

One of the difficulties involved in a co-operative advertising program is in raising the needed funds.

*See "National Markets and National Advertising," p. 189.

An association advertising program is of a general character and of industry-wide scope. Its purpose is not to deflect the consumer demand in a given field from one product to another, but to shift a portion of the consumer buying power from one avenue of consumption to another. If joint advertising stimulates the demand for a given product the entire industry is benefited. There is no way of dividing the profits of such activity among members and non-members, or even among the members, themselves, according to their respective contributions to the support of the program. Associations therefore, usually place the project on a basis of voluntary co-operation, the prestige of the association being used to elist donations of all, whether members or non-members, who stand to benefit from the publicity stunt. This is not a satisfactory method, for it is not pleasant for a liberal contributor to see a competitor gain, who has not contributed to the common expense fund. In some cases this causes an abandonment of a project even after it has started.

Co-operative publicity then, is a device for tying up the productive and consumptive economic world. It forms an active part of trade association activity of a beneficial and constructive nature.

Co-operative Insurance.

All economic enterprises have risks of various kinds. Many of these risks cannot be evaded or foreseen.

It is possible through insurance to lower the ruinous consequences that may result from losses by fire, theft, explosion, shipping and industrial accidents, defalcations, economic depressions and other contingencies. Insurance provides an opportunity to all those subject to the risk, to pool their risks and distribute the burden of the losses over the entire group.

From the standpoint of industrial control, insurance protection, through trade associations, consists in grouping business interests for mutual protection.

Methods of Co-operative Insurance.

The trade association may simply instruct and educate the members in the necessity of protection against unforeseen contingencies, through the medium of insurance. Sometimes the trade association explains the advantages of insurance protection for all risks. Ordinarily, for such contingencies as fire and industrial accidents, there is little need for this advice. But in such matters as theft, and defalcation insurance, or explosion, and insurance of employees, the firm does not usually realize the significance and value of insurance. A trade association may render even more specific service in individual cases by assisting in drawing up the policy, advising upon the fairness of the rates and the soundness of the particular insurance company. In some cases the association represents the firm who has

suffered loss in the adjustment of a claim. Another important service is in reducing the risks of the individual firms. Such educational programs as result in reducing industrial accidents and fire losses are familiar examples.

The trade association may negotiate with insurance companies for specific premium rates. This usually involves some pressure upon associations members toward reducing risks. Trade associations sometimes draft new clauses in policies for specific firms. More commonly, they devote their negotiation efforts to secure a readjustment of premium rates. Ordinarily, more pressure may be secured through a group of like firms than through individual firms. The influence of associated action is usually effective in securing the attention of insurance companies for adjustment of premium rates or reclassification of industrial risks.

In some instances, the association undertakes a funding of the risks within a trade through mutual insurance. Trade association activity has been devoted to mutually insuring those engaged in a given trade or industry. Many associations are now sponsoring or administering agencies for the collective assumption of certain types of risks within their respective jurisdictions. These agencies are of three kinds: mutual insurance companies; stock insurance companies and inter-insurance exchanges.

Mutual companies are occasionally organized by



the officers of trade associations as representatives of the entire association. In some cases there are several mutual companies within an industry, each with a separate local territory. The trade association business bureau supervises and co-operates with the independent companies to protect its members. This plan has not been successful because of the objections to the organization of mutual companies, which are usually partnerships and subject to the laws of many of the states.

Some associations have an insurance service for their members through a stock insurance company basis. As a rule active officials of the association are the organizers of such companies, and goodwill is the basis of the expectation that service rather than profit will be the principle of their administration. The origin of these companies is to be found among firms who feel that their industries are unjustly classified by regular insurance companies or that they are discriminated against in the matter of claims. The feeling that less litigation may be required and the fact that the association insurance company is not formed for profit has led to a growth of these companies. There are certain drawbacks however in these association insurance projects. One is the fact that insurance companies run by associations are restricted to a given trade. This means that sharp fluctuations must be borne by the associates, for



the risk is not spread over a wide area and the number of members is comparatively small. There is also the disadvantage suffered by trade associations because of lack of experience in the insurance business.

Inter-insurance exchanges are unincorporated associations, in which each member exchanges with every other member, a contract of indemnity against specific risks for specific amounts. Usually the contract provides for pro rata assessments to make good deficiencies resulting from abnormal losses. The subscriber is not liable for any portion of unpaid losses in excess of his proportionate part of the total risks underwritten. This form of protection was popular during the World War and for a period afterwards. The insurance exchanges depend upon the endorsement of a trade association for their establishment and growth. The trade association really acts as an advertising agent and solicitor for the insurance exchange.

The soundness of a co-operative insurance program depends largely upon the nature of the industry itself. An industry with widely dispersed factories will encounter more difficulties than one with closely localized plants. Again, the risks vary within a trade. Regardless of these difficulties co-operative insurance through trade associations is of real service to the economic world and is typical of the constructive policies of these organizations.

Traffic Bureaus.

Modern industry and modern transportation are very closely related. Large scale labor, today, depends upon extensive markets and these markets in turn depend upon efficient transportation. This situation has led the shipper to pay attention to shipping costs and to build up a close co-operation with transportation companies. Such co-operation has two chief functions: first, to arrive at an equitable rate as between different industries and different localities and secondly, to help the members of an association, especially, the smaller firms who cannot financially support a traffic bureau of their own.

Trade associations, through co-operation in transportation matters, try to secure and maintain equitable rate and service relationships, so that a given industry may not be subjected to unnecessary burdens. To accomplish this purpose trade associations negotiate adjustments and secure relevant facts and information. Negotiations are carried on with individual carriers, and public service or railroad commissions. The negotiations cover such factors as, minimum car-load lots and weights, packing requirements, demurrage charges and classification of products.

Informative Service of Traffic Bureaus.

The technical character of the numerous service regulations and the complexity of the rate making calculations

afford the trade associations a chance to render a real service to its members. The small firms may gain considerable by utilizing the advantages of expert traffic advice. Trade association bureaus on traffic make available for members a valuable fund of knowledge concerning methods of reducing freight costs, and reaching distant market areas. Attention is directed toward packing methods, alternative routings, the utilization of various kinds of equipment and other traffic expedients. These activities, known as informative functions are sometimes supplemented by specific services.

The informative service is manifested clearly in the publication of complied freight tariffs, which apply to the raw materials and the finished products of a particular industry. These are valuable to those responsible for shipping instructions. In some cases, a complete file of rates and classifications are kept at trade associations' headquarters and members are urged to make use of these statistics. Changes that occur are listed, and are available shortly after they are put in effect by the carriers.

Organization of Traffic Bureaus.

The organization of this type of trade association activity depends upon the nature of the service to be rendered. For the simpler services, a standing committee serves as a central office for the assembling of data or for exerting pressure in dealing with carriers. Members are

usually interested in their own private concerns and cannot become traffic experts. And as result there has developed special bureaus or departments, with trained personnel. Under these conditions facilities are provided for handling all sorts of transportation problems in an effective manner.

The choice method in seeking economy and improvement in shipping service depends to a great extent upon the nature of the particular industry. Sometimes the services of private traffic bureaus, which are entirely independent of trade associations, have been used. However these individual problems are not those of the entire industry. Some trade associations have established a separate organization, devoting itself to problems of transportation and traffic, rather than using the services of an independent organization.

Trade associations have in this way helped to bring about more efficient shipping methods. They assist their members, the public, and the carriers by providing maximum loads for cars. Again, there are the related problems of better packing methods and the reduction of loss and damage claims. Questions of transportation may well be handled by the standing committees on traffic in the trade associations. Frequently, however, associations meet many complex traffic problems, requiring the services of a traffic expert, or requiring the formation of a special traffic commission. The Southern Hardwood Trade Association is an outstanding example of such a

special commission.* The best argument for the serious consideration of a traffic department in an association lies in the results already attained by such organizations. Typical examples are the National Automobile Chamber of Commerce, the Pacific Coast Shippers' Association, the Silk Association of America, the National Petroleum Association and the Southern Pine Association.** It is not necessary for every trade association to have a traffic department. There are many instances where the scope of an industry and its nature require no traffic supervision. No traffic problem arises where an industry is localized, that is, where the association members are in a single city or county. Nor is it necessary when most of its products are sent by express or parcels post.

Improvement of Employment Relations.

This is one of the activities that many trade associations have failed to promote fully. Labor troubles cause economic wastes and result in evil social effects. There are several methods which have been used to eliminate these labor disagreements. One common method is through legislation. The Federal government and the several states have taken steps to eliminate the resultant wastes. Although remedial legislation is effective in extreme cases that require adjustment, there are numerous cases which require the voluntary action of several groups.

*See "Trade Association Activities and the Law", by F.D.Jones,
New York, 1922, p. 177.

** Ibid., pp. 104-116.

A second method employed by labor for collective strength is trade unions. The employers were quick to form collective bargaining organizations to include those trades and industries. Trade associations have taken part in these organizations of collective bargaining units. In some cases the trade association acted as the medium for bargaining with the trade unions. Annual agreements have been executed between the Glass Blowers' Association since 1885, with trade unions.* The United States Potters' Association has had an arbitration agreement with the National Brotherhood of Operative Potters for a number of years.** The Granite Paving Block Manufacturers' Association makes regular contracts with the several trade unions representing their employees through a Labor Committee, which has full power to sign agreements for the associated members.*** The difficulty has been that there seldom exists a unanimous opinion among the associated members as to the wisdom of this method of composing labor agreements. Some manufacturers are opposed to dealing in any manner with trade unions, and so object to the trade association of which they are a member, engaging in such negotiation. Therefore most associations shun these activities altogether, or simply try to straighten out the difficulties in their own particular industry.

The Stove Founders' National Defense Association, representing about eighty per cent of the stove manufacturers has been organized primarily for the purpose of collective

*See "Collective Bargaining in the Glass Bottle Industry," by John A. Voll, July, 1920, pp. 50-51.

**See "Proceedings, U.S. Potters' Association, 1919, p. 28.

***See "The International Molders' Union of North America," by John Hopkins University Studies, Series 39, No. 3, Baltimore, 1921.



bargaining. For other purposes the industry is organized in the National Association of Stove Manufacturers. In the printing industry the labor difficulties have been met by a recognition of the two participants in the trade. Two organizations have been formed, known as the Open Shop Division and the Closed Shop Division, to handle problems that arise between employers and employees.

Another method of avoiding labor difficulties has been the attempt by employers to eliminate the grounds of complaint among employees. Programs have involved such provisions as sanitation, profit sharing, and employee representation. Through trade associations this activity can be made uniform in a trade or industry. There are many opportunities which arise, wherein trade associations may help solve problems of employer and employee.

A number of associations have featured safety campaigns and have contributed to the development of safety standards, within their industry. For several years the National Electric Light Association has had a committee studying accident prevention measures, and it has issued several reports in this field*. The Portland Cement Association has prepared annually, since 1913, a study of accidents occurring in the plants of member companies, and it issues a bi-monthly Accident Prevention Bulletin, which contains papers on health and accidental hazards of the cement industry**.

*Report of Accident Prevention Committee, National Electric Light Association, New York, 1920. Ibid, 1921.

**Personnel Research Agencies, p. 71.

The Southern Pine Association, the American Gas Association, and the American Dyes' Institute have all co-operated to reduce industrial accidents*.

A broader range of activity is that involving better working conditions. The Baltimore Federation of Clothing Manufacturers maintain a Research Bureau, which undertakes studies to bring about, "general improvement and standardization of working conditions", in the plants within the Baltimore area**. In these numerous ways the trade associations have tried to improve relationships between employers and employees. While a good beginning has been made by individual firms, it is clear that the habit is spreading through co-operation and education among groups. This has resulted in stabilizing employment relations.

Arbitration in Commercial Disputes.

1. Nature of Arbitration.

In the commercial world, disputes among buyers and sellers are common. The growth of litigation in recent years involving business relationships, provide evidence of the frequency of commercial disagreement. The causes of disputes are many and varied. The unstandardized character of commercial products, and their nomenclature may cause difficulty in negotiation. The differences in trade customs may lead to the same misunderstanding. Sometimes important terms are not put down in writing and differences of opinion

*Personnel Research Agencies, pp. 71-75.

**Ibid. pp. 160-161.

arise between the parties. Sometimes irresponsible business parties yield to the temptation of seeking financial advantage through repudiation of their binding agreements. These disputes tend to undermine the element of goodwill in the business world. Co-operation which will eliminate this situation, may be included in the growing list among the constructive activities or trade associations.

The situation may be relieved in two directions. First, the occasions for business disputes may be minimized. Secondly, a method of settling disputes out of court may be formed. Several activities which relieve the first of these ends have been mentioned previously. Standardization of products and of trade names, adoption of uniform contract forms, and development of codes of ethics, all tend to regulate business conduct, and make it less liable to disagreement. Although the primary objective of the above forms of business co-operation is not to eliminate misunderstanding in commercial relationships, their influence in this direction is considerable.

The regularly constituted courts afford the normal medium for the settlement of business disputes, but there are objections to the regular law court procedure. First, law procedure is costly and slow. Secondly, the diversity of commercial disputes makes it impossible for the judges to have an intimate understanding of factors that are involved. Because of the above objections there has been a

decided effort in recent years to develop informal agencies for the settlement of common disputes. The method used by the trade associations is usually termed commercial arbitration. It differs from conciliation, which usually relies upon compromise for its weapon. The process of arbitration aims to secure an impartial consideration of the facts and a determination of the issue upon its merits. It corresponds somewhat to judicial procedure, but is free from the expense and delay to a great extent. Moreover, it tends to establish a body applicable to a particular trade or industry and thus remove occasions for future misunderstanding on similar.

Commercial arbitration has been sponsored for many years by the New York Chamber of Commerce. In 1920 the New York Statute, made valid, arbitration clauses in contracts. One difference that has risen is in arbitration settlements between business men in one locality with those of a distant region. Because of this, there has arisen agitation for suitable instruments and procedure of national scope. The most recent tendency has been to adopt a loosely formal arbitration procedure within the distinct lines of each of the several trades. For this purpose the organization of industry into trade associations has afforded a natural line of demarcation, both as to territory and function, and many associations have extended their activities into the field

of commercial arbitration.

Settlement of Disputes Among Association Members.

The commercial disputes among association members are generally with outsiders and the problem arises of inducing parties beyond the jurisdiction of the association to submit their claims to the judgment of a tribunal, which represents the interest of their opponent. This has led trade associations to educational efforts directed to the establishment, in other trades, of confidence in their goodwill, and an appreciation of the advantages of the arbitration system.

Settlement of Disputes with Outside Firms.

In settling disputes with outsiders, only one party is subject to the jurisdiction of the association. These associations may include in their contracts, clauses, which require non-members to submit disputes to an arbitration committee. The American Wholesale Coal Association and the National Association of Finishers of Cotton Fabrics are of the above type. These two associations also undertake an educational program, to point out the advantages of arbitration settlements. Some associations co-operate with other associations representing related branches of trade or industry. Several examples of the above widening of the arbitration agreement function are the following: The National Boot & Shoe Manufacturers' Association, the National Association of Shoe Wholesalers, the National Shoe Retailers' Association



and the Tanners' Council of America. The Presidents of the above four associations constitute a Council of Arbitration, to which a member of any of the four organizations may submit a dispute, which he has been unable to adjust with any concern in the collective membership.*

The motion picture industry, because of the difficulties encountered in the valuation of films and the frequency of negotiations, presented a special need for an arbitration process. Through the co-operation of the Motion Picture Producers' and Distributors' of America, and the Motion Picture Theatre Owners' Chamber of Commerce, arbitration boards were established in 31 distributing centers throughout the United States. This development followed the appointment of Mr. Will H. Hays as Director-General of the motion picture industry, in 1922, and was in considerable measure due to his influence.**

In the grocery trade, too, there has existed since 1913, joint machinery for the out-of-court settlement of commercial disputes. The Dried Fruit Association of California, and those of New York, Chicago, and St. Louis, the National Canned Foods and Dried Fruits Brokers' Association, the National Canners' Association, and the National Wholesale Grocers' Association, have formed joint arbitration boards in important cities for the settlement of commercial disputed arising among the members of their organizations, and the

*See "Trade Association Activities," Department of Commerce, Washington, 1923, pp. 104-107.

**Address by Chas. C. Pettijohn, Arbitration Society of America, May 6, 1924. Published by the Society, New York, 1924, p.3.

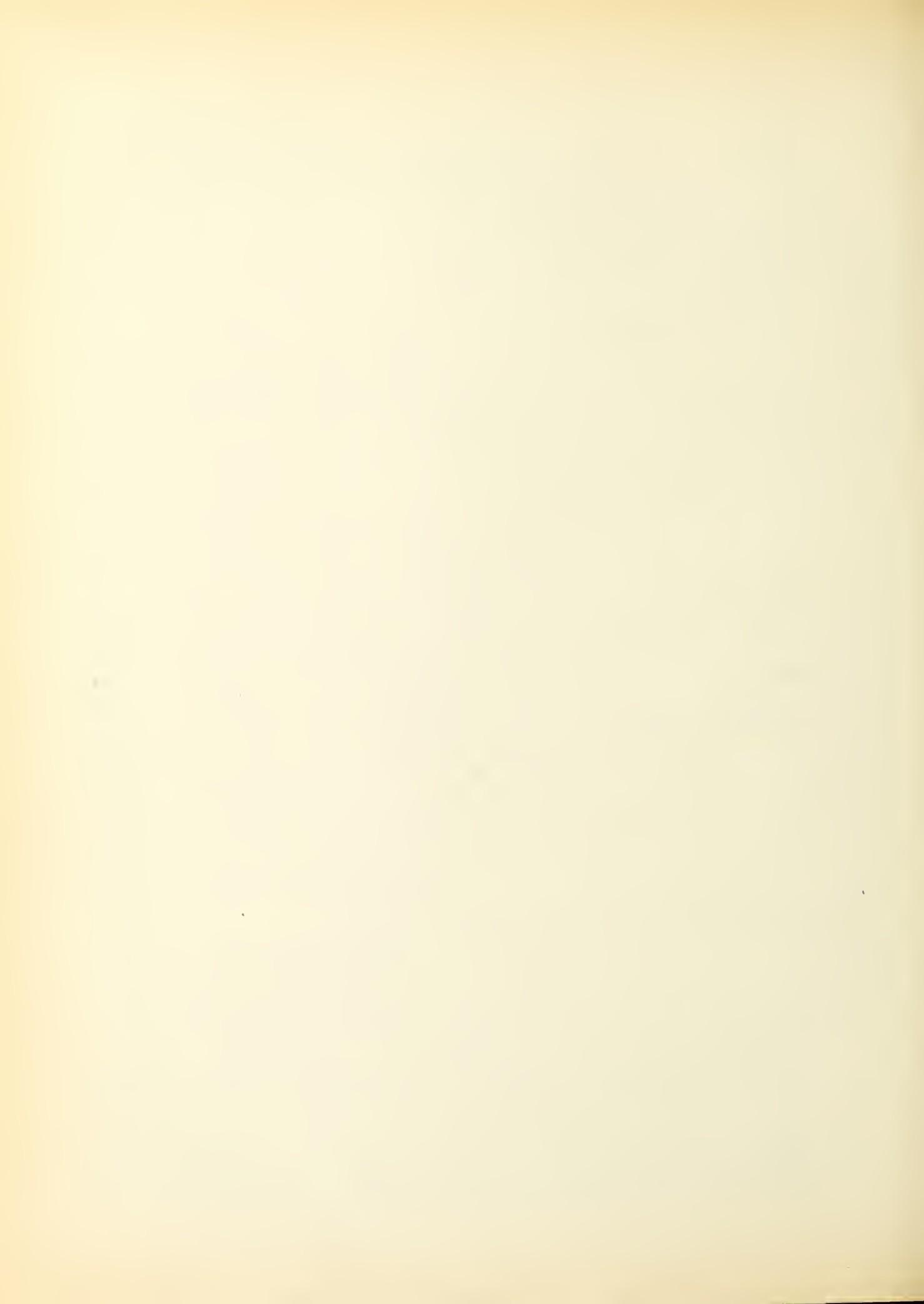
committee reports as follows: "When we consider the rapid growth of this method of settlement of trade disputes, it is safe to say that within the near future practically all commercial disputes in this country, will be settled by arbitration instead of resorting to the delay and heavy expense incident to legal action and recourse to the courts*:

It may be noted, finally, that arbitration agreements call for voluntary action. Some trade associations have ventured to make commercial arbitration as compulsory as they can by stipulating, "that membership shall be contingent upon the willingness of the member to forego resort to the courts for the enforcement of issues arising out of business dealings. The By-Laws of the National American Wholesale Lumber Association, for example, provides that, in case of a dispute between members of this association, or between a member of this association and a member of another recognized lumber association arising out of the purchase or sale of lumber or other forest products, either party may demand and shall be entitled to an arbitration of such differences upon request, in writing, to the association and upon signing the arbitration agreement". **

There are three exceptions to the above requirement; (1) lumber inspections; (2) disputes previously arbitrated; (3) disputes arising prior to membership. The association By-Laws authorize the Directors to expel members

*See Dunn & Dimond, "Commercial Arbitration," San Francisco, 1922, p. 299.

**By-laws of National-American Wholesale Lumber Association, March 20, 1924, Art. XVII, p.17.



refusing to arbitrate.

While coercive measures may encourage submission to arbitration in particular instances, and appear to have operated successfully, the most lasting benefits are likely to flow from educational methods, which impress the members of the ultimate advantage of arbitration, in settling disputes. Trade associations afford a ready means, both for the exertion of this educational influence and for the establishment of the necessary agencies of arbitration procedure.

Participation in Public Matters.

The activities discussed in this chapter have had as their function, the carrying out of one or both ends: the increase in efficiency in producing and marketing processes, and the tearing down of barriers which interfere with economic relationships. The fruits of these activities should finally accrue to the benefit of the consumer.

Relationship Between the Government and Industry.

The relations between a government and industry may become a source of inefficiency and friction, tending to interfere with the industry's economic efficiency. Many public measures of direct or indirect economic importance are of concern to the business world. The possibilities of governmental power and supervision affect vitally specific trades and industries. For effective participation in government, the demands of industry must be represented and clearly

stated.

Representation of Industry before Public Bodies.

Difficulties arise in trying to agree upon the demands of general and specific interests, and the chances for abuse are many. Efforts by specific organizations to influence the action of public authorities are not always for the benefit of the industry as a whole. There is need of vigilance and experience that has shown that there is no way of completely blocking evil designs without doing away with all progress. In addition to constitutional safeguards, the moral quality of the representative of the people must be relied upon.

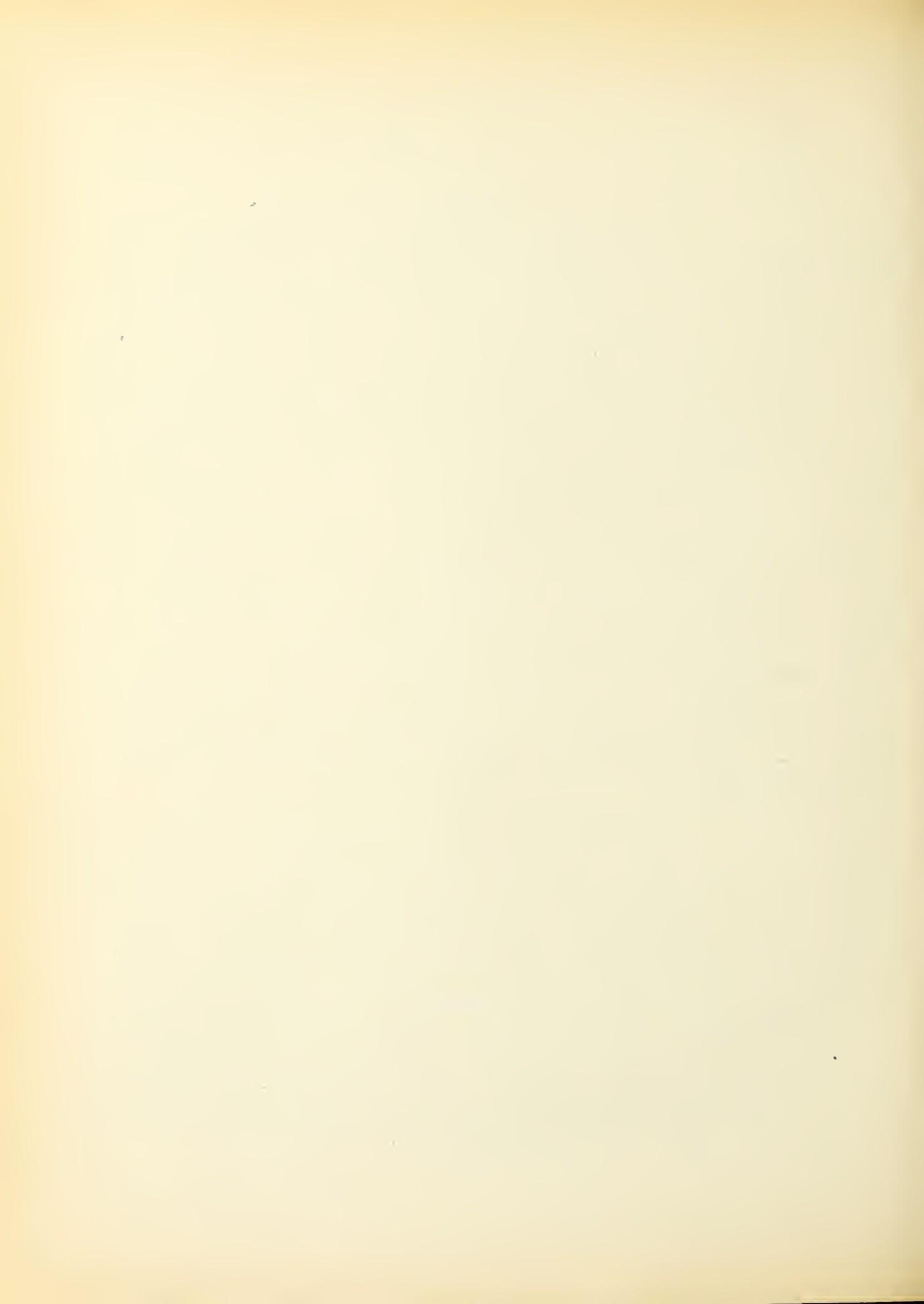
The largest field of activity for a body representing a given trade or industry with reference to public matters, is in influencing legislation. Certain statutes such as those inspection laws, fixing minimum standards for specific products and laws concerning sanitation and safety, mean much to some trades. Tariff, transportation, and labor laws, although of broader scope, operate to the prejudice or advantage of certain special lines of industry. A comprehensive organization such as a trade association, is an agency through which a trade or industry may exert marked influence. Moreover, only through co-operative effort, is it feasible to present data, which today is necessary for responsible expression of opinion. At least, as far as the

peculiar problems of particular industries are concerned, trade associations serve as a useful instrument for such representation, in the enactment of legislation.

Most trade associations have legislative committees, performing for their membership some measure of service in connection with legislation, affecting their special interests. In some instances this service is largely confined to keeping the membership informed of the course of legislation. This emphasis is illustrated by the activities of the Associated General Contractors of America, the Millers' National Federation, and the Railway Car Manufacturers' Association, but the representative function in matters of legislation is to exert influence upon public authorities on the basis of the collective needs and wishes of the industry.* The most effective results in this direction, have been attained by the larger and more powerful associations, which maintain facilities for collection of data and for specific investigation.

The types of legislation included in the legislative activities of trade associations are many. The emphasis of each association is upon those aspects of public policy, which vitally concern the affairs of its membership. Trade associations through representatives have more opportunity for effective activity today, because of the rapid growth of the administrative branches of the government. The Interstate

*See "National Trade Associations," Department of Commerce, Washington, 1923, pp.68,120,214.



Commerce Commission, the Federal Trade Commission, and the Bureau of Internal Revenue, prescribe rules and regulations which effect trades and industries, as much as Congress. Constant contact with these agencies is one means of supplementing legislative efforts of trade associations, especially in matters of transportation, trade practices, traffic, import duties and taxation.

The function of presenting the views and defending the interests of specific industries, in connection with the formulation of public policies is generally performed by regular legislative committees of trade associations. These committees are usually given the power and provided with facilities to render their representation as effective as possible. The Silk Association of America, for example, provides as follows: "It shall be the duty of the Committee on Legislation to keep informed of all measures affecting the silk industry that may be proposed in legislative bills or enacted by state legislative bodies or Congress, to secure copies thereof, and report thereon to the Board of Managers, whenever, in their opinion, it becomes necessary. The said committee shall take into consideration the impartial execution of revenue laws, and hear, and report on, complaint of any evasions thereof, and subject to the approval of the Executive Council, shall represent the Association in all legislative matters, affecting the welfare of the silk industry"!*

*By-laws, Silk Association of America, Art. Xll, Sec. 11, Fifty-first Annual Report, 1923, p. 24.



The National Association of Farm Equipment Manufacturers have a state legislative committee divided into committees for each state. This enables the resident members of the respective states to take action on proposed legislation more promptly and with better success in heading off or amending drastic, confiscatory laws.*

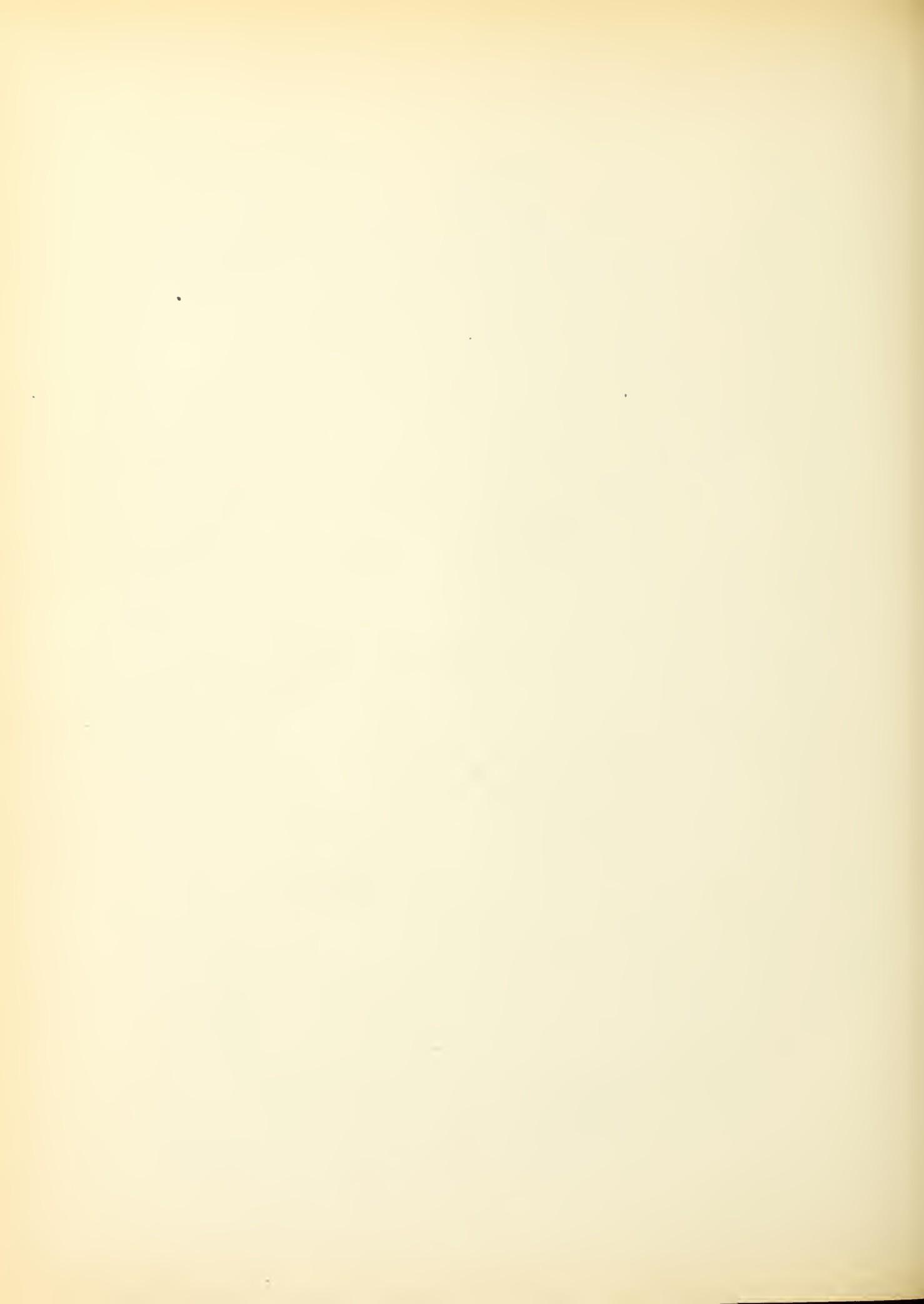
There are many matters of public interest in which associations have no occasion to become intimately involved, but toward which an expression of approval, or disapproval is deemed necessary. Usually, the association as a whole adopts resolutions, which express the sentiment of the entire trade. Sometimes committees are appointed to deal with specific matters.

Through a variety of ways, therefore, trade associations are trying to influence and shape the governmental policies, national, state, and city. They seek, primarily, to further their own ends, to free the industries from government control and increase the prosperity of their members. Although subject to abuse, these activities do free industries from restrictions and assist public authorities in securing an understanding of the economic relationships and needs of those who manage particular trades and industries. In a democratic society trade associations are entitled to freedom of expression and to aid in shaping legislation concerning business enterprise.

*National Association of Farm Equipment Manufacturers, Proceedings 1923, p. 20.



PART V



Part 5.

The Place of Trade Associations in the World of Industry.

The foregoing chapters have dealt, in a broad manner, with trade association activities as related to modern industrial society and their value to our economic structure. It has been pointed out that in many ways business enterprises have sought to shape conditions and methods of their commercial and industrial paths, through trade associations and co-operative organizations. The character of association activities has been described and their economic nature illustrated. It is true that many trade association functions have been investigated to determine their legality and desirability.

A. Advantages of the Competitive System.

There are certain advantages which flow from the competitive management of productive resources in the various lines of economic activity and there are certain disadvantages which follow from the complete independence among competitive business units. In other words it appears that while there is need for maintaining the competitive system of industrial organization; there is also need for supplementing this system by resort to co-operation. The basic merits of the competitive system is in the general tendency to promote individual freedom, to lend flexibility to the adjustment of productive processes, and to safeguard the public against private exploitation. The character of these advantages will be described



briefly. Then will be pointed out the chief disadvantages, which result from unco-ordinated competition, and which will present the argument for the tendency toward business co-operation.

In the first place, the competitive system involves the recognition and maintenance of individual freedom. Competitive adjustments depend upon the free expression of economic wants and upon freedom of enterprise in satisfying them. Demand in the market, is the controlling guide of the productive activity, and each firm is free, through its own risk and effort, to turn its resources to the production and sale of such goods, both in character and quantity, as it deems profitable. The competitive system allows men to apply their talents in whatever way they may wish. It allows them to take up work for which they are best adapted and allows them to drop those for which they are not fitted. The entrepreneurs, who are economically unfit, fail. But the principle of freedom which is built upon the institutions of private property and contractual liberty, is throughout the system. Public and private authority is reduced to a minimum. The principle of freedom is in harmony with social ideals and political doctrines. The ideal of freedom is so impressed upon the minds of the people in the western world that it is not feasible, to organize industrial processes upon any principle except that of economic liberty. In the United States, despite the need



of voluntary co-operation in some directions and government regulation in others, no system of industrial control is apt to be formed, unless based upon individual initiative and private enterprise.

The flexibility which characterizes the functioning of competitively organized industry, constitutes the second of its outstanding advantages. The competitive system allows easy adaptation of productive processes and economic relationships to conditions of modern life. Through its many operating units, and through its freedom from external authority it provides a flexibility of productive operations to the changing requirements of consumers. The spur of competition also induces constant study of the sources of raw material. But, the most significant way in which the advantages of flexibility show themselves is through experimentation in productive processes. Such experiments lead to technological progress and to improved administrative methods. The urge of self-interest among independent producers and sellers stimulates changes in manufacturing and marketing methods. New devices are being introduced constantly. The comparative value of various methods, as tested by results, is the determining factor in shaping the character of industrial technique or commercial practice. This process of experimentation seeks to increase productive efficiency.

The third of the outstanding advantages which,

under private enterprise, rise from the maintaining of a competitive industrial system, in which the direction of economic activities is in the hands of rival producers and sellers, is to be found in the tendency to protect the consuming public from exploitation. Prices, determined through competition tend to be reasonable. They result from the free operation of the forces of supply and demand. It is doubtful if any system of monopolistic control could furnish equal protection against exploitation. Arbitrary power in the hands of private enterprises to manipulate entire industries, is a source of danger to the public interest. The only manner of offsetting this danger would be government intervention of price fixing or like measures. Under our system of government, because of the constant change of personnel of largely political qualifications, any exercise of collective monopoly would result in considerable abuse of that power. In any case, under the present system, of private enterprise, competitive conditions provide the best method of protecting consumers against the power of the producers.

Outstanding Defects of Competitive Rivalry.

The above advantages of the competitive system represent general tendencies. There are certain weaknesses in the operation of industry on the competitive basis. This weakness is due, partly because of the inability of the law to maintain free and fair competition in trade and industry. This is in spite of the increase in statutory and administrative



regulation. Under the guise of co-operation restraints of trade may be practiced and tactics employed to destroy competition. The efforts of the law to eliminate these practices may be ably assisted by trade associations. The development of trade associations in setting up and adopting ethical ideals can exert an influence stronger than that of legal enactment, in the maintenance of free and fair competition. These defects arise from the unco-ordinated pursuit of competitive advantage. They tend to place the small-scale dealers at a disadvantage in carrying on the competitive contest with their more powerful competitors. They show themselves in economic waste and industrial instability. They carry the struggle to such circumstances as warrant the formation of business co-operative policies, through the medium of trade associations. Co-operative activity among trade competitors would result in safeguarding the elements of the competitive system and would increase the economic efficiency of business. The freedom of action afforded by the competitive system opens the way to influences which may tend to frustrate the achievement of economic liberty. In business today, the exercise of the privilege of self-initiative in industry is rather narrowly restricted because of the concentration of wealth and the influence of capital in the control of the productive processes. The development of large scale industry and the growth of combinations in trades, tend to place the smaller firms at a disadvantage in their struggle for trade. Through the co-operative



efforts of trade associations many of the economies which result from large scale operations are open to scattered small scale enterprises. Small scale firms also benefit through the interchange of patent rights, credit information, and the many other trade association activities. The result of co-operation along these lines is to increase the effectiveness of the economic freedom, which characterizes the competitive process. Moreover, numerous competitive practices involving fraud are curtailed. Through the development of business standards, for instance, trade associations have supplemented the legislative measures of the government, for the prevention of frowned on commercial practices.

The advantage of flexibility in competitively organized industry has its counterpart in the instability of the course of trade. Sometimes this instability reaches the condition of chaos. The operation of competitive businesses without adequate knowledge of general market conditions can only lead to miscalculations in business policies. While such information will not cure such trades from business cycles or depressions they will tend to lighten them. This business information cannot be assembled by individual concerns, even though they have facilities, for much data are beyond their reach. Under present conditions the only alternative is to be found in co-operative collection and distribution of trade information; and trade associations have taken up this work

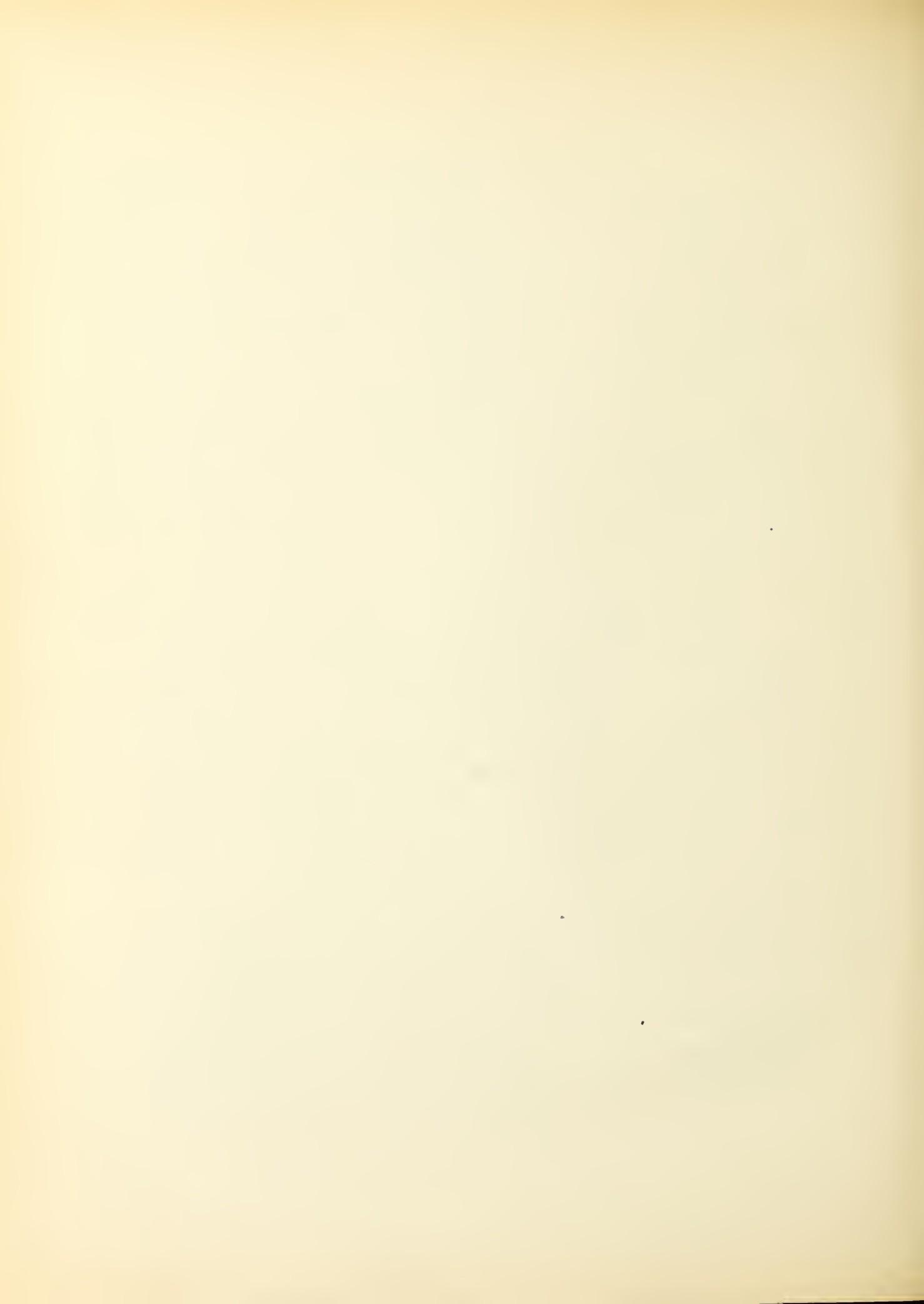


on a large scale.

Instability also arises from the competition for patronage, which tends to neglect the cultivation of enduring trade relationships. In this direction trade associations have exercised an influence through educational efforts in joint publicity, which tends to eliminate competitive advertising and intensive salesmanship methods.

The wasteful duplicity of like products which spring from the freedom and flexibility of the competitive system is another source of instability. The growing efforts toward standardization, under trade associations, tend to lessen this evil, and increase industrial efficiency.

Finally, experience has shown that the advantage to the public of protection against exploitation, which is afforded by the competitive system may not be effective. The quest of trade advantage may develop into such fierce rivalry that common sense and prudence are forgotten. In these cases economic motives are subordinated to the intense rivalry of conquest for trade. While the consuming public are not affected at once as a result of this rivalry, in the long run the commercial enterprise will make the public pay for the expense to which the industry went. While the law forbids conspiracies in restraint of trade, the law may be and very often is evaded. Legal principles, if stretched too far might even work injury to the public rather than resulting in benefit for them. The



law, therefore, must be supplemented by the pressure of collective responsibility within the ranks of the trade. While there may be hazards in this system of growth in co-operation, through trade associations, there is not so much danger as in the present unco-ordinated system. The rules of law may be reinforced by the voluntary cultivation of business standards and a professional responsibility among the associates of a trade.

Safe Guards Against Restrictive Agreements.

There is a place in the industrial structure for trade association activities. When they enter upon strictly economic activities there is no danger of their being subject to legal attack. While it is the policy of the law to maintain competition, it appears that this policy is adhered to by trade associations when they carry on constructive activities.

The chief reason of the present public policy toward industrial control, may be said to be the preservation of private business enterprise and the protection of the public against economic exploitation. As these ends are somewhat conflicting the courts have been trying to harmonize economic liberty and public security. This has been accomplished through the maintenance of competitive conditions. The anti-trust laws seek to safeguard the public welfare by preventing the suppression of competitive conditions. They



condemn conspiracies in every form which obstruct the free course of trade. The distinction between unlawful conspiracy and legitimate co-operation is now well recognized. So long as business competitors, through trade associations, seek only to build up the character of their trade, they are in complete accord with the law.

Because of this there is broad scope for trade association activity within the established principles of anti-trust policy. There is opportunity not only for cooperative efforts to increase economic efficiency and industrial stability in many directions, but also for the voluntary development of business standards and regulation of commercial practices. In the latter respect, trade associations may come to share with the government itself, the responsibility for eliminating unfair competitive conduct. There can be no legal objection against trade co-operation which seeks to accomplish one of the ends for which government regulation of business has been instituted. The anti-trust laws are directed against association for private profit at public expense. The law does not oppose the development of the constructive functions of trade associations.

The limits of lawful co-operation through trade associations are necessary limits. A competitive system must have some sort of regulatory restriction. But these restrictions must be elastic or they would work a hardship upon



private interests without promoting the public welfare. If the limits of lawful co-operation are indefinite it is because they must necessarily be flexible. It is important, however, that the constructive activities of trade associations be safeguarded against harassing prosecution and unjust criticism. There are a number of internal and external safeguards which protect trade associations against attack.

One of the principal sources of security which may be encouraged by the internal administration of a trade association is the maintenance of publicity in all its activities. There is no reason for secrecy in any of its work. Trade co-operation, from its very name, has no excuse for privacy. Trade associations are not profit making institutions and their services are designed to benefit industry as a whole, to the ultimate advantage of the public. Particular groups, calling themselves trade associations, may pursue ends which require secrecy, but these are not true trade associations. Insofar as trade associations conform to the prevailing type they operate upon the basis that much is to be gained from publicity in their transactions.

Emphasis upon the educational aspect of trade co-operation is another internal safeguard of importance. The entire trade association program can be made to reflect this attitude in their work. By engaging in this work trade associations stimulate a favorable attitude toward their activities,



in the courts and also in the public opinion.

The external safeguards of business co-operation may be found in the governmental measures, which are designed to prevent the perversion of normal trade association activity. Legal prohibitions continue to serve as the chief means of promoting the legitimate activities of trade co-operation. Experience has shown that there is a strong temptation, when business men associate themselves in common action, to seek dominating power and easy profits, through restrictive agreements. Only through the vigilance of the prosecuting officials and the enforcement of the anti-trust laws against every trade association which steps outside the bounds of public policy can trade associations be kept within the paths of constructive co-operation.

Better judicial interpretation of lawful trade association activities would further safeguard the development of legitimate business co-operation. It is hardly possible for the law to state definitely, exactly what trade association activity may be permitted, for the law is based upon general principles and is couched in general terms. But there may occur, due to time and changes in economic relationships, changes in judicial opinion. This has happened, when realization of the real value of trade association activities has been recognized by some courts. The removal of this uncertainty in the law is a difficult problem. The judges continue



to confine their decisions to the specific issues at hand. The principal method of a novel character which has been suggested as a means of minimizing the uncertainty of the standing of current practices under the law is the declaratory judgment, whereby courts may clarify legal issues in advance of their actual emergence in specified controversies*. It represents "what might be called preventive adjudication." Aside from the fact that the advisory opinions are not final, there appears to be serious objections to the issuance of judgments which might arise in actual court conflicts. The most helpful remedy therefore would seem to be in initiating friendly suits against trade associations engaged in breaking new paths of business co-operation. The interpretations of the law thus evoked will serve to safeguard the development of the association movement against restrictive arrangements and unhealthy growth. Finally, the growth of co-operation between trade associations and governmental agencies affords a promising basis for the constructive development of trade association activities. The efforts of the Federal Trade Commission to raise the plane of competitive conduct can be facilitated by the voluntary elimination of bad tactics and dishonest practices and by the establishment and enforcement of business standards, which tend to promote the advancing ideals of the business community. The growing development of codes of business ethics and the pressure of trade associations on its

*See "Advisory Opinions of National and International Courts," Harvard Law Review, June, 1924, Vol. XXXVII, No. 8, pp. 1002-1009.



members mark a move in the right direction. Promising opportunities for co-operation are to be found in developing working arrangements between these trade organizations and the non-legal departments of the government. Trade associations are in a position to represent entire branches of industry with a considerable degree of authority, and may facilitate the removal of at least the extreme maladjustments in employment relations. Such constructive efforts, in co-operation with publicly established agencies serve to divert these bodies from the channels of restrictive policies. These opportunities for co-operation are especially notable in connection with the activities of the Department of Commerce, and the greatest measure of progress has been achieved in this direction. The Department of Commerce has recognized the potentialities of responsible trade associations and has extended encouragement to the development of constructive business co-operation. "The trade association as a facility for the promotion and self-regulation of industry and commerce," writes former Secretary Hoover, "has become, by reason of its scope and activity, an important American business institution."* Due recognition has been given to the representative character of trade associations, and the help and facilities of the various bureaus of the Department of Commerce have been rendered available to them. Perhaps the most significant results achieved through the Department of Commerce co-operation have been in matters of standardization of products

* Trade Association Activities, Department of Commerce, Washington, 1923, p. 1.



and in the collection and publication of trade information. While the co-operative functions of the government agencies have proved very fruitful, there appears to be no especial need for the establishment of a special type of administrative supervision over trade associations. On April 3, 1922, Senator Edge of New Jersey introduced a bill providing for the registration and regulation of trade associations by the Federal Trade Commission.* The bill carried at least a suggestion of the possibility of constructive co-operation between the commission and registered trade associations in the compilation of statistical data.

The Future of the Trade Association Movement.

The chief issue, which the development of trade associations present is that of reconciling freedom and authority. On the one hand lies the individualistic policy of unregulated competition, which has been found in practice to involve such waste and ill-will and to produce among the more powerful a degree of mastery which becomes an obstacle to the trade itself.

On the other hand lies the unpromising alternative of authoritative control of industry under official agencies, which is generally deemed to involve such danger of inflexibility and stagnation in economic processes as to deter all but the most venturesome from embracing it. Between these extremes lies a course which the development of trade

*April 3, 1922, S. 3385. Same bill introduced on April 4, 1922, in the House of Representatives (H.R. 11156).



associations in recent years has made more than a visionary speculation. Through voluntary co-operation in trade and industry, safeguarded by the necessary maintenance of freely competitive conditions, it is possible to obtain the happy balance between freedom and authority in the economic world. The trade association movement may invigorate the competitive system and stimulate the sense of collective responsibility. The full potentialities of trade associations have not been yet fully realized. Their contribution to a better organization of industrial control merely provides an indication of their possibilities. We have seen what the trade associations have done through their constructive activities and it is fair to emphasize the promise in the future of properly directed and properly safeguarded business.

As recent as February 3, 1931, the United States Chamber of Commerce in its attempt to stabilize employment and insure it against the disturbing effects of the recurring cycles of economic depression, advocated greater co-operation of the trade associations to supplement the effort of the individual corporations. "This is preeminently a task for business," said Barnes. "In no other way can a permanently successful solution be found. Ill conceived governmental remedies might easily, as they have elsewhere, lead to greater ills than those which they are intended to cure. "There is a well-founded view," he said, "that the cumulative series of



industrial and commercial dislocations was the underlying cause of the business cycle. This has given rise to the trade association movement and perhaps the time has arrived for putting these associations to the test. If a certain number of industries can give their workers the assurance of uninterrupted employment it would provide a formidable barrier against these recurrent waves of apprehension and distress." The Chamber is convinced, he said, that the trade association constitutes a starting point and has asked the counsel and service of proven leadership in various lines of industry.*

Finis.

* See "The Boston Globe," February 8, 1931.



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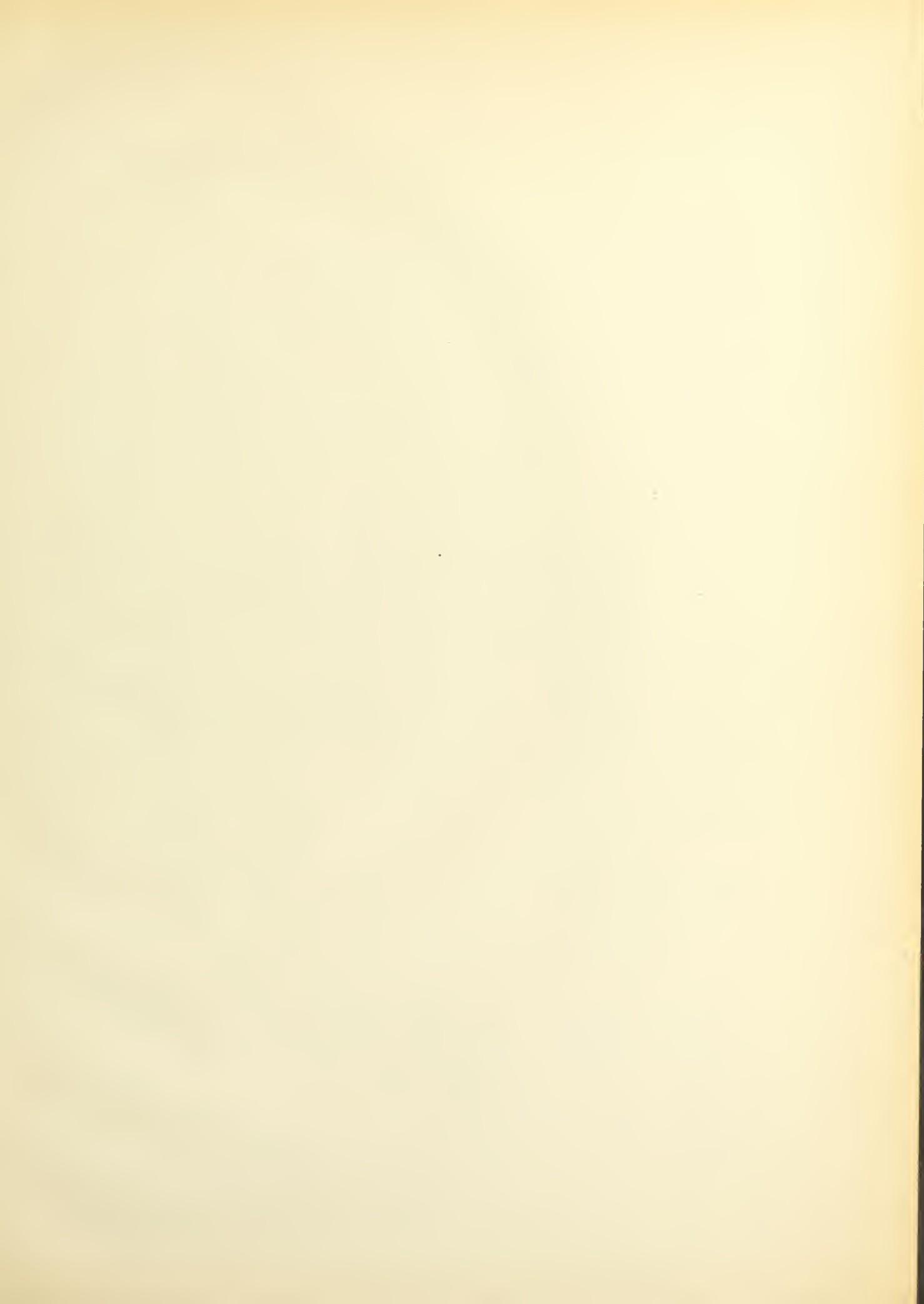
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